

Responses to June 2020 consultation on improving access to delay compensation - Published May 2021

Abellio Group

Assertis Ltd

First Rail Holdings

GTR

Rail Delivery Group

Rail Ombudsman

Southeastern

Tracsis

Trainline

Transport Focus / London TravelWatch

Transport for London

Which?

Abellio Group response to the ORR Consultation for Delay Repay

1. Licence Condition

Q1. Is there any evidence that we have not considered which may be relevant to this chapter?

Customer Attitudes to Delay & Compensation

All Abellio Train Operating Companies (TOCs) believe that Delay Repay is a good scheme. Passengers value train punctuality highly and it is right that recognition is given for those whose journey is delayed. That said there are a range of customer experiences and consequences as a result of delays.

- Work by Transport Focus shows that satisfaction with punctuality falls about 2% per minute of delay, but this is from a relatively high base and even at 15minutes the majority of passengers say they are satisfied
- The conditions under which delay is experienced is a key factor. Those who have a seat and who are able to do something productive or enjoyable are much more likely to remain content than those who are not
- How passengers are dealt with during delay is also key. Around half of passengers who experienced a delay say they are still very or fairly satisfied if they believe the delay was handled very well, compared with only 5% if the delay was handled very poorly
- There is little evidence that passengers who do not claim feel marginalised. Indeed, the document states that only 25% of passengers claimed when the value of their ticket was less than £5 compared with 43% when it was greater than £5, indicating that many passengers are content not to claim
- It needs to be clarified whether relevant authorities in devolved settings have been consulted.

Economic Consideration

A key rationale for providing compensation when services in any industry or sector are not of the expected standard is to retain the goodwill and continued business of those affected. In that respect, there is a question of how best to allocate funds to achieve the best outcome.

- During last year, four Abellio TOCs paid out £11.8m to over 1.4m passengers¹The average payment was £8.77 and the average cost of processing £1.60 per claim, giving a total cost per claim of £10.37. This means the total current industry cost is £14m.
- Using the statistics quoted within the consultation of 35% for the existing claim rate, if 100% were to be achieved, this would increase the cost to the industry to £40m (i.e. an increase of £26m).
- If 100% of claims led to an additional industry cost of £26m p.a., it is unclear how this would be funded, given that Government is now underwriting the cost of the railway, the future ownership and revenue risk model for the industry is unclear.
- Network Rail (NR) account for 60% of all delays across the rail network, and these are delays which are outside the TOCs control. However, NR does not contribute to the Delay Repay scheme and all delays are funded from within each TOC (Note: at the time of the original regulated Track Access Agreements, Season Ticket Discounts resulting from poor performance under Passengers Charter were part funded by NR, but the subsequent move to Delay Repay has removed this arrangement)

The proposition outlined within the ORR's consultation document is that increased claims is the right outcome. This does not take into account whether this is a good economic outcome and whether this increased industry cost might be better invested in improving the customer experience during delay.

Reasonable Awareness Levels

58% of eligible passengers who don't claim cite lack of awareness as the reason, which begs the question as to what a reasonable percentage might be. Rail is a relatively niche product, with less than 10% of all passenger kilometres being undertaken by rail. Within this, the instance of delay is

¹ Merseyrail is missing from these numbers

relatively low and therefore the degree to which the general public is likely to be interested and therefore attentive to general measures to increase awareness is likely to be low.

Q2. Should open access and concession operators (as well as franchise holders) be subject to the proposed licence condition? Should it apply to other holders of a passenger SNRP50?

Our view largely centres on the economic case described above. In our view it would be unreasonable for Open Access Operators to be liable for Delay Repay unless they are compensated proportionately by Network Rail. For concessions, this would be a matter for the awarding authority and the financial terms under which they would wish the concession to operate.

Q3. Do you have any comments on our initial draft of the delay compensation licence condition (in Annex A)?

Our concern here is for clarity and consistency in the expected approach. TOCs operate Delay Repay Schemes² in response to the franchise or concession authorities' requirements. Therefore, we believe that concerns expressed should be raised and progressed through existing Franchise Agreement processes or as an alternative that any new requirements can only be implemented once existing requirements within Franchise Agreements are removed. Two or more laws are not better than one, in fact they can lead to confusion, double sanctions/jeopardy etc. Where TOCs are accountable they should be penalized but the lack of accountability for Network Rail, as the biggest single source of delays, means that the proposed delay compensation licence condition regime fails to link the customers' interests effectively to leverage over the main cause of those delays.

2. Increasing Passenger Awareness

Q4. Do the proposals for the provision of information – online/on board/in station/ in person – provide sufficient clarity and assurance for train companies and passengers?

Abellio TOCs agree that customer communication is key to ensuring that customer rights and entitlements for Delay Repay are clear. We agree that there should be a uniform approach across the industry. However, train companies hold different requirements within their obligations, and as an industry this inconsistency could be viewed externally as a blocker to uniformity in approach.

Any changes to committed obligations as a result of future rail contracting mechanisms provide an opportunity for consistency and ORR should not make changes in advance of this. Also it is likely that pandemic related messaging will be the most important feature of travel for some time to come. People will want this reassurance plus high quality real time travel information ahead of a reminder about delay repay which only affects less than 5m out of 1.7bn journeys. (0.3%). A clear focus on reactive messaging for delay repay – i.e. put the effort into making sure that delayed passengers hear and see the messaging.

Further analysis has previously been undertaken to assess where claim patterns were particularly low, identifying age, gender, party size as influences on likelihood to claim. Some of the reasons for a lack of claim is due to the journey experience, journey purpose, delay length in relation to length

² Except for Merseyrail, who are operating a concession based 'no DR scheme'

of timetabled journey etc. It would be useful for train companies to understand for these groups what good information provision looks like. This could enable a more focussed review.

Station facilities are variable, and not always operated by the rail company who primarily serve the station. Traditional formats such as poster boards at stations have limitations. Printing and production costs are prohibitive with no means to measure the efficacy of poster campaigns on rail property. Prime poster board sites are, quite rightly, laid over to key information however smaller and unmanned sites similarly only have finite space which can be given over to poster space.

On train facilities to advertise or promote Delay Repay by poster boards or racking are variable dependent on rolling stock in use, and in some instances may be extremely limited. Where we have newer rolling stock (e.g. Greater Anglia's Stadler trains) we have been able to integrate Delay Repay messaging into the PIS. That said, we may not be able to ensure that there is a continuity of experience as a customer may subsequently travel on older rolling stock where this facility does not exist. This is replicated across the country. There are also differences between CIS systems in use; with some upgraded and able to easily incorporate disruption messaging, and others unable to facilitate this. Some of them will be due to levels of historical investment in specific lines of route whilst others may be due to timings for system upgrades. There is also a question around how practical on-board announcements may be on high density, metro TOCs, with short journey lengths and dwell times.

TOCS have undertaken significant steps to improve information provision on customer facing websites. ORR, Transport Focus and Which? have focussed upon ensuring minimum standards in this area. We would welcome booking engines and non-TOC booking channels to be required to make information easy to access as well as point directly to the TOC or TOCs who operate the services. A post journey email may also help to jog customer memory.

Overall, we support further insight into where certain standards cannot be met, be that in person/on train or at station, what impact that has on claim behaviour and what alternatives would be deemed acceptable in a major disruption CSL2 event where information provision is rapidly changing.

Q5. Is the list of the information requirements comprehensive? What, if anything, should be added (or removed)?

The information requirements are comprehensive but need to be available in condensed form to enable TOCs to best manage how they can meet the needs in the variable environments they operate in. There should be a base level indication of where a 'where possible' situation would be acceptable. We welcome further guidance about what acceptable would look like in this scenario, based on what customers actually want. Poster sites and CIS screens are critical operational real estate, so including more information on one topic risks reducing the impact of other information. For those TOCs with high density, short length travel patterns we believe that digital communication should be the main focus, as opposed to station/train.

Q6. Are the requirements for proactive provision of information by train companies during disruption clear and proportionate? Are there any further requirements which should be specified?

The requirements are clear and proportionate, however, there needs to be a recognition that during disruption events the focus on ensuring safe crowd management, and train dispatch processes are prioritised. Safety critical activities cannot be compromised, and we have concerns that expectations need to be on a 'where possible' basis to ensure a safe systems of working are

maintained. In addition; onboard and revenue staff are required to use mobile retailing systems which are bulky. We provide our people with mobile devices where appropriate to their role so would expect this to be reasonable for our people to help direct customers to use a website or app where there is no facility to either carry or store paper literature. In general, train companies continue to use social media and other platforms to share key messages, and we feel that we are good and consistent at meeting this requirement during disruption. The experience of the pandemic will drive more emphasis onto online and passenger announcements away from paper literature, which will be impractical to distribute on high density, short journey TOC services in any case.

Q7. Are there any other requirements you consider would be necessary and proportionate to improve passenger awareness of delay compensation?

Minimum requirements need to be defined to enable all TOCs to review and understand the full extent of challenges across all information systems, communication methods and customer touch points.

3. Improving Claims Processes

Q8. Do you have a view on the timescales, and associated requirements for contacting passengers, that we have proposed?

We feel the timescale should be maintained at 20 working days in accordance with compliance. In accordance with complaint handling the TPis should make it clear that the TOC response times from the time the claim is submitted to the TOC. If a customer has not responded to any further information request from us due to an incomplete application, closing cases at 20 days would not reflect our performance. Stopping the clock on a claim gives the customer time to provide the relevant information for their claim to then be processed.

Q9. Are the proposals on information requirements clear and proportionate? Do they provide sufficient flexibility to reflect the variety of claim and ticket types, whilst addressing the risk of unduly onerous information requirements?

Many TOCs operate different Delay Repay systems by which forms automatically integrate with wider systems. Having a standard form would lead to a complex and onerous process with high costs. All Abellio TOCS are currently reviewing the level of information which is required by customers as part of the claims process with a view to improving this. A single streamline approach could be a good idea especially though a well-known, central portal such as NRE. There may be fundamental changes in the retailing and marketing of UK Rail and any customer facing systems should reflect this future state – not be based around the legacy model.

Q10. Is the provision on alternative forms of evidence clear - does it allow adequate flexibility for innovative solutions?

There would need to be agreed industry standards of the type of alternative forms of evidence, focussed on Digital solutions like the customer expects from us. Consideration has to be given if TOC systems would be able to accept different evidence. With some TOCs average DR claim being as low as £11, development needs to be balanced against the cost to the TOC to implement. We question the example given of GPS tracking as an alternative and if there is customer appetite for this. In general we believe that development of delay repay should proceed at the same pace as

development of digital ticketing – aligning the development costs reduces the burden on taxpayer and farepayer.

Q11. Is the provision on physical format claims clear and proportionate? Yes

Q12. Are the requirements with regards to online claim processes clear, proportionate and comprehensive?

Many TOC booking systems are not integrated with Delay Repay systems and data transfer would incur significantly high development costs. The legal and GDPR impact is something we should consider. Consideration also needs to be made for booking systems which are not TOC owned.

Q13. Are there any other requirements you consider would be necessary and proportionate to improve the claims process?

As the industry seeks to migrate from ‘paper’ tickets onto smartcard technology, we continue to experience barriers for customers claiming DR when they use smart options. There is no industry wide, accessible system that records transactions onto a particular smartcard for all purchases and thereby enables automated Delay Repay process. For the industry to improve process automation, a database of such tickets needs to be created and accessible for all TOCs. Similarly, to reduce fraudulent claims, which we know is still an issue with the Delay Repay process, the industry must start to consider whether a system which holds details of all delay repay claims is financially viable.

4. Continual improvement and reporting

Q14. Do you have a view on the requirement that train companies report annually on the steps taken to improve awareness and processes for delay compensation?

We would suggest a need for evidence that customers care enough about how DR processing performance vs the known concerns around punctuality, reliability etc before we start developing solutions. Consideration would need to be given to the value of generating these additional reports versus customer readership and encouragement of claim behaviours.

At the moment Two TOCs (GA and WMT) already produce an annual/biannual customer report which details improvements in numerous areas and could include delay repay performance.

Q15. What is your view of our proposals for passenger surveys?

➤ *Is it proportionate to survey every claimant for their views on awareness and process?*

This could give a clearer picture of awareness and claim rate, however there should be a standardised process on calculation of ‘claim rates’ to ensure consistency. Several TOCs have their own surveys and programmes (Wavelength, NRPS etc) that would track customer experience, including DR. The risk is that an additional survey could cause customer fatigue and the ORR would need to consider customer opt outs. There is also the additional risk is that another survey may subsequently reduce TOCs relationship with customer on existing surveys, so any additional survey questions should be built into existing mechanisms

➤ *If not, what might the alternatives be e.g. specified number or percentage?*

Potentially every leisure purchase could have a link to opt in, whilst season ticket holders surveyed at time of ticket renewal?

➤ *Should these be standardised?*

To some extent to ensure consistency of comparable data (e.g delay repay speed, effort, accuracy) as this would also allow a comparable benchmark of TOCs.

Consideration would need to be given to the different delay repay regimes that could make a standardised survey difficult to deliver.

➤ *How frequently should they be undertaken?*

Quarterly reporting would be a consideration however, there needs to be a wider discussion if this is proportionate now customer journeys and customer bases have changed following the pandemic. To avoid the danger of asking the same customers the same questions on each claim, having 'survey windows' might provide a measure of trends over time.

Q16. Are there any other matters upon which it would be helpful to seek information?

A general range of customer effort and trust questions that we would ask at the same time. This is something we believe would sit better with the individual TOC to develop themselves. Also the ORR could play a part by monitoring customer perception directly.

5 Third Party Intermediaries

Q17. What are your general comments on the proposals, bearing in mind ORR's twin objectives to harness the potential benefits of greater TPI involvement whilst retaining important protections for passengers, train companies and taxpayers?

In general we are happy to see TPIs offering an alternative path to making a claim, however we believe:

- That TOCs should not bear any additional system development cost required to deliver this
- That the Flow of compensation should be between TOC and customer (not via TPI)
- That making the process easier, and increasing awareness should be prioritised as bringing TPIs into the process with the best of intentions could end up causing more confusion and friction.

Q18. What are your comments on specific substantive policy proposals with regards to the appropriate standards for TPI firms, as listed below

In general we agree with the proposals, but would emphasise the following:

- Transparency is critical, in particular TPIs need to make it clear that you can claim direct from TOC at no charge
- Payment should not be held by the TPI on the customer's behalf, and TPIs should be required to validate claims where no physical ticket is available.

Q19. What are your views on the proposed implementation regime, including the expectation that TPIs and train companies should work cooperatively to ensure compliance with the TPI Code, and the proposed mechanism for resolving disputes.

We agree within the context of this being a regulatory function, however we believe there needs to be consideration given as to how enforcement of standards can be managed with TPIs and also how data capture and insight can be made available.

Q20. What, if any, further measures do you consider necessary and proportionate to achieve the objectives?

- Need to ensure that dispute resolution is clear when TPIs are involved.
- Need to be clear if there is any difference between a TPI who is the original retailer processing a claim and a TPI who is a 'claims handler'. We don't believe it is the customer's or industry's interest to encourage the latter.

17th September 2020

ORR compensation consultation
Office of Rail and Road
25 Cabot Square
London
E14 4QZ

Dear sir / madam,

Re: ORR consultation on improving access to delay compensation

Assertis welcomes the ORR's publication of the "Consultation on improving access to delay compensation", published on 30th June 2020, and wishes to respond to the points raised within it.

As an independent retailer of train tickets since 2010, Assertis has heard from many customers who have bought tickets through us, but have then been delayed on their journeys and have sought compensation from the train operators, or refunds directly from us. As well as selling tickets direct to the public, Assertis provides white-label and API ticket retailing systems for train operators, and sells tickets to the business market. Consequently, we are able to provide much insight and experience that will be useful to this consultation.

The views in this response are Assertis' own.

The ORR rightly recognises that take up, by customers, of delay compensation, is low, and that it has not improved significantly in recent years. However, we are very surprised, and disappointed, that ORR believes the solution to this is to ensure that claims intermediaries are able to receive, and then pass on to train operators, claims for delay compensation, whilst train operators continue to directly process the majority of delay repay claims.

This position is fundamentally anti-customer and anti-independent retailer, and is at odds with the ORR's roles of improving outcomes for customers and ensuring fair competition.

To achieve much greater take up of delay compensation, customers need a much less complex experience than exists today, and this is not addressed in ORR's consultation at all. Today, a customer must claim delay repay from the train operator that caused the delay, and not from the retailer (whether train operator or independent) from which they purchased their ticket. Sometimes, of course, this is simple and obvious (if the customer is making a journey involving only one train operator, and purchased their ticket from the same train operator). Often it's not, though - many customers make journeys involving more than one train operator, and it isn't always obvious (to a non-expert - and why should it be?) which train operator caused the delay. When customers ask us, we provide the right information, but we often find that TOC delay repay teams dispute that it was their fault, don't understand the rules, or simply pass the claim on to another TOC. All this results in wasted time, a poor customer experience, and an unnecessary increase in costs for the industry at a time when it cannot afford it. And, by its very nature, it puts independent retailers at a disadvantage by forcing their customers to seek compensation from another party.

A far simpler solution - one which is customer-focused - would be for the process to be changed, so that the customer should always seek delay compensation from the retailer (whether TOC or independent). Customers always know where they bought their ticket from (whether online or at a station), and there is no dispute as to where to make the application.

This also would end the situation where a retailer (TOC or independent) must currently say to a customer:

- "if you abandoned your journey, and did not reach your destination, or did not travel at all, because of delays / cancellations, then get a refund from us"; or
- "if you were delayed in reaching your destination, by 15 minutes or more, then ask for compensation from the train operator that caused the delay".

This is not just a matter of customer convenience, though; this is also the key to increasing the level of delay repay compensation. It is retailers - specifically, online retailers - who know what journey a customer has made (or should have made). And so it is online retailers who are in the best position to use industry data to determine if customers were delayed, and to contact them to either automatically provide compensation (in the case of Advance tickets) or to make them aware that they are likely to be entitled to compensation, and to make this process straightforward.

This is a compelling user-case: as a customer, I should know that the retailer from which I purchased a rail ticket will help me get compensation if I'm entitled to it. There's just the one place to go to deal with purchasing, refunds and compensation - a "one stop shop". Given that independent retailers sell more than half of all tickets sold online, then it is difficult to imagine that this would result in anything other than increased uptake. It would be likely to further increase delay compensation uptake in the business market too.

Such an obligation could easily be carried out by independent retailers. There is already a funds transfer process in place through the industry's settlement system, and an industry accreditation system to ensure that tickets are sold correctly. Both of these could be used to manage delay repay, backed up by a code of practice, a variation to the thirds party licence agreement, and a right to audit. A fee, in line with the costs incurred by train operators, should be paid to independent retailers for processing delay repay compensation - train operators will save significant sums of money. It is quite likely that this will result in not only an increase in take up by customers but also a decrease in unit costs for processing delay repay.

This approach will be a win-win for the rail industry, for customers and for taxpayers. It should be implemented as soon as possible and is one of several different improvements to the rail industry's retailing and after-sales experience that will help attract customers back, and return us to growth.

In our appendix to this letter we address the ORR's consultation points in greater detail.

We look forward to engaging with ORR and the rest of the rail industry to achieve a step change in delay compensation for customers.

Yours sincerely

Alistair Lees
Managing Director

Appendix: detailed response to ORR's consultation and questions

Chapter 1:

ORR sets out two main issues to be resolved:

- passengers are unaware of delay compensation
- the claims process is too onerous

In our view, ORR should give further consideration to how passengers can be made more aware of delay compensation rights; this is via the retailer. With online (both consumer and business) retail being both the largest and fastest growing channel (and set to continue to be so as a result of Covid-19), it makes much greater sense for online retailers to take the lead in making customers aware of delay compensation rights, and helping customers to receive it.

Regarding the claims process being onerous, ORR concentrates solely on the forms that customers must fill in, and the number of fields that those forms contain. It does not consider at all the difficulties of making multi-TOC delay claims, nor the difficulty of the message that customers must go somewhere else to get their compensation (this can apply to tickets sold by TOCs too); nor the difficulty of the message in trying to differentiate between abandoned journeys (refund from retailer) and completed journeys (compensation from the TOC that caused the delay). These (together with a lack of automation where it could be so easily done) are the real causes of the process being seen as "onerous". The ORR has misunderstood the problem here, and therefore proposed the wrong solution.

The ORR goes on to propose that TPIs are the solution as they can "make customers aware" and because they have "had some success in the aviation industry". These comparisons are wrong. Users of aviation are well aware it is not a national, integrated transport service - and so they have a different expectation from users of rail. Further, suggesting that TPIs could "make consumers aware" is fantasy - they do not have any contact with actual customers, so can only do wasteful above the line advertising to reach customers (these costs will have to be passed back to the cash-strapped industry). The answer is obvious - online retailers who already have contact with nearly 50% of customers should be those who are responsible for managing the delay compensation process.

Chapter 2:

ORR sets out the need to make consumers more aware of delay compensation rights, identifying:

- the role of Transport Focus in this
- the need to do this online (both generally and as part of online booking)
- the need to do this at times of disruption

In its proposals regarding online awareness, ORR mentions only "train companies", as if they are the only retailers of train tickets. Has ORR forgotten that there are independent retailers? Improved awareness can best be delivered through the online retailer (if - as a customer - I choose to buy a ticket from an independent retailer, why would I want to then go to and navigate a TOC website to make a delay compensation claim? If I make journeys by different TOCs, do I want to learn different TOC websites to do this? And to set up different accounts to get compensation? As a customer, the answer is obviously "no" - I want all things relating to my ticket in one place - and I've already indicated what that place is, by buying my ticket from it in the first place).

Whilst we agree that TOCs should make customers aware of the availability of delay compensation on board / at stations, it is important that this does not become even more "single TOC" focused. We quite frequently hear announcements on trains that are along the lines of "this train is over 30

minutes late, so you are entitled to delay compensation". This is not necessarily true - a customer might be on an earlier connecting train (so still arriving at their destination on time), or they might be on a train that's on time, but still late (because they missed an earlier train, because of a late-running connection). On train announcements should focus on whether the customer's journey is delayed; not just whether the train is late.

Chapter 3:

ORR sets out how to make the process of making compensation easier, by:

- train companies saying why they want to collect up to 24 pieces of info
- train companies all having the same form
- consideration being given to a single central place to do compensation

We consider that none of these solve the problem. The solution is to enable retailers to provide compensation, automatically where possible. If retailers do this then, as retailers already have the necessary information (what ticket was bought, whether it was used in the case of an eTicket or smartcard ticket, whether the train(s) were on time and what the potential delays were, the customer's contact details, etc.) customers will need to enter little, if any information (unless they bought from a station, of course). The problem of unnecessarily long and complex forms is solved at a stroke for almost half of the industry's customers. This is the way to make it a much simpler process with much-reduced friction and, consequently, increased customer take up. Asking customers to re-enter data elsewhere (or consent to it being passed to another party for processing) only makes things harder for them - not easier.

Chapter 4:

ORR sets out the need for train companies to continually improve on their performance with regard to delay compensation, by:

- a rail sector focused on the interests of its "passengers"
- continued improvement by train companies in delivering compensation
- reporting to passengers and ORR what's going on

We are disappointed that the reference to "rail industry" does not include retailers, and reverts to the assumption that train companies are well-placed to deliver improved claim rates (although the evidence, as presented by ORR in this consultation, suggests that in the past four years, the current method of exclusively using train companies to manage delay compensation has not resulted in any change whatsoever to the rate of claims). ORR's own evidence suggests wholesale change - not incremental improvement - is necessary. "Rail industry" must, by necessity, include retailers. And ORR should regard people who buy train tickets and make journeys by train as "customers", not "passengers" (the latter implying that they are passive, and do not need to be either acquired or retained by the industry - a view that is at odds with contemporary consumer expectations, as well as being at odds with the need to attract people back to rail).

Chapter 5

ORR sets out its requirements for train companies to accept claims from TPIs:

- through a code of practice that the TOCs must adhere to
- and through a code of conduct that the TPIs must adhere to

In all cases the TPIs are simply acting to pass through a claim to a TOC. We question if there is much real value in this, but do not oppose the existence of TPIs. However, we do not see how adding another layer onto the claims process will do anything to speed claims up (one of the first stated objectives of ORR in this consultation). It is more likely to have the opposite effect.

ORR should change this entirely:

- retailers should process delay compensation
- TPIs should pass on claims to retailers (not train companies) in the same way as proposed in this consultation

Answers to questions:

Q1. Yes. The ORR has not considered the role of independent retailers in solving the issue of low delay compensation claim rates. It must do so.

Q2. Yes, all train operators, whether franchised / concession or open access, should be subject to the same licence conditions. Customers can't tell the difference between them, and there is no reason for them to be expected to do so. There needs to be a simple message: if your train journey was delayed, then you are entitled to compensation.

Q3. We have no comments on this at this stage; it may need changing significantly in the light of the need to use retailers as the primary means to deliver delay compensation.

Q4. Whilst these proposals are helpful, they will not significantly help to achieve ORR's objectives. They are, after all, more of the same. ORR and the rest of the rail industry needs to work with retailers - especially online retailers - to deliver the levels of awareness that are aspired to, and the step change in claim rates that will follow

Q5. The list of information requirements is reasonable, but the key requirement to automatically and proactively contact customers who are eligible for delay compensation is missing. Retailers (whether TOC or independent) can fulfil this role for many (though obviously not all) customers. ORR may think that this is covered by the requirement to inform customers during disruption. However, whilst this can be helpful, it can also lead to overload for customers (who may be more concerned about how or when to reach their destination). It is better to explain compensation rights in more detail after the event (e.g. by an email on the day after).

Q6. See our response to Q5.

Q7. Yes. Mandate retailers to provide this information (and the method to obtain compensation) to their customers

Q8. No. Regarding a timescale of 10 or 15 working days for processing delay compensation is very poor and is not in line with consumer expectations today. There should be a requirement to (for example) process 90% of all eTicket / smartcard delay repay automatically and on the same day as the delay occurred, with customers getting their compensation as quickly as the banking system transfers funds (typically up to two or three days; sometimes much more quickly). Where customers have physical tickets, we should be processing 90% (for example) of those within 5 days, and using images of the tickets, as with refunds. The industry needs to exceed consumers' expectations if it is to recover - the ORR's proposals are insufficiently demanding and it feels to us like they are a reluctant improvement, rather than relentlessly focused on customer needs.

Q9. They are fine as far as they go.

Q10. Yes, delay compensation should be accessible to all. For customers who have bought online it should be an online process (that is what they expect), via the retailer that they purchased from.

Q11. Yes

Q12. Yes, except that this should be a proactive process; not a passive one, where the customer has to seek something out. This is best achieved by using retailers to deliver delay compensation, as retailers have all the required information to hand.

Q13. Change it completely so that it is retailers, and not carriers, that are responsible for delivering it.

Q14. All retailers - both TOC and independent - should be handling delay repay, and thus reporting on it. It may also be useful to be able to slice this data by operator; this could be done by RDG (which would receive the necessary information from retailers via the settlement process).

Q15. Doing mass "passenger" surveys is likely to be a waste of time and resource, and is not proportionate. This will just duplicate efforts being made by online retailers. At the point of retail - online, station ticket office, TVM etc. - customers should be made aware. Reminder info on trains is fine. PAYG customers should be made aware through on station / at point of tap advertising.

Q16. We cannot think of more

Q17. We believe that TPIs should submit claims to retailers. Retailers should process delay compensation. ORR's proposed code of conduct would remain the same, except that it would apply to the retailer (whether independent or a train operator), and not just the train operator.

Q18. We don't have strong views on how these might apply to TPIs. The same principles should apply to retailers - whether independent or TOC - as providers of delay compensation, though.

Q19. No strong views.

Q20. Make retailers responsible for delay repay.

Q21. We propose that ORR amends its drafts to enable retailers to manage delay repay.

This is a response by First Rail Holdings Limited on behalf of our train operators trading as South Western Railway, Great Western Railway, TransPennine Express, Avanti West Coast and Hull Trains, as well as First Customer Contact Limited which processes delay compensation claims for our operators.

Licence condition

Q1. Is there any evidence that we have not considered which may be relevant to this chapter?

The core argument ORR presents in this chapter is that passengers are not claiming the compensation they are entitled to because (from paragraph 39):

- a majority of passengers are unaware of their entitlement, and;
- there can be a perception that the claims process is too onerous.

Our operators already take steps to promote the entitlement to and ways to claim delay repay or charter discounts. However, we agree that improving awareness is central to addressing these concerns.

Measures to improve passenger awareness of delay compensation are necessary

We note that while addressing these points will be necessary to raise claim rates, there is no guarantee that this will be sufficient. The same Transport Focus research (footnote 18 to paragraph 41) shows that 48% of non-claimants have a mindset to “Never claim” or “Rarely claim”, and these mindsets may persist even where additional awareness steps are taken by operators.

We also note that while there might be a perception that the claims process is too onerous, that might not actually be the case in practice. However, passengers are only likely to start to revise their views once that have attempted a claim for themselves. Given that the claims process does require the passenger to take some proactive steps to initiate a claim, this may prove to be a hurdle, particularly for leisure travellers who might not travel often and who experience delays only rarely when they do.

We are therefore less confident than ORR appears to be that improving

awareness will prove sufficient to fix the current passenger delay compensation gap. At some stage in the process we would argue that there must be diminishing returns in the overall value to passengers relative to the costs of chasing down customers to encourage them to claim. We are not at that stage yet, but these will remain factors for ORR to consider as it oversees the Code of Practice and the TPI Code.

Paragraphs 43 and 44 conclude that “once a passenger has claimed they are likely to claim consistently in the future” and “it increases the probability they will become a repeat claimant going forward.” This suggests that, for each passenger, there is a single tipping point where they become sufficiently aware to commence claiming. Beyond this point, the passenger is aware and additional messaging will be of much reduced value – to the point where it could be distracting, even unwelcome.

Nevertheless, we agree with the conclusions of paragraph 45 that there is still an information and awareness gap to address for passengers, to increase awareness of the right to claim for delays, and to reinforce the straightforward nature of the claims process.

Measures to improve the process for claiming delay compensation are necessary

Paragraph 47 discusses the complexity of the claim process and notes that more than one in four choosing not to claim make this decision because it would take too much time or be too complicated. This is based on survey respondents’ opinions which may not reflect the reality of the claims process. Paragraph 50 recognises that small value claims are less likely to be pursued by customers than large ones. While reducing complexity is likely to have an impact on claims rates, it is not clear that this in itself will be sufficient to address the difference and that some claims will always remain so *de minimis* that for some passengers they are not worth the effort.

We have included some evidence on the minimum number of clicks required to submit a claim through our operators to First Customer Contact in our response to Q9. Our operators also offer an automated delay repay functionality, which is available on Advance tickets and smart within TPE, Avanti and SWR and which already makes these claims much more straightforward than a more traditional process.

In general, customers won't be aware of how easy the claims process is for them to navigate unless they have first-hand experience, and we believe this is difficult to convey credibly in awareness messaging.

Paragraph 49 implies that the 16% claims rejection rate is attributable to the complexity of the claims process and does not consider the other factors that might be causing claims to be rejected. This rejection rate might be entirely justified by other factors unrelated to complexity, such as fraud.

The table below shows indicative aggregated data provided by First Customer Contact on the reasons for rejection, as a percentage of overall rejections.

[Redacted]

As per the National Rail Conditions of Travel, claims to the wrong operator are passed on to the correct operator for processing.

The data above suggests that, of the reasons for claim rejection, only a fraction can be clearly linked to claim complexity, and a material proportion of rejections are potentially linked to deliberately fraudulent activity. Given this evidence, we believe that while it is possible to make improvements to customer information and claims processes to bring the rejection rate down, that the potential for improvement is overall low, because a significant proportion of current rejections are for reasons unconnected to those causes.

The role of TPIs

Potential arguments against TPIs are listed in paragraph 54 and include a lack of transparency about fees and inadequate protections against duplicate or fraudulent claims.

Through First Customer Contact we have first-hand experience of dealing with TPIs, and can confirm that in some cases there is an alarming lack of transparency and concern for fraud protection. As examples:

[Redacted]

Protection against fraud is a critical consideration with financial impacts for the operator, the taxpayer and ultimately for passengers. It is an aspect that we consider important for our operators to be able to enforce. The delay compensation being paid is operator, not TPI, money so it is no surprise that TPIs' steps to prevent fraud to date have been inadequate (as acknowledged in paragraph 54) and operators will always be more strongly incentivised to ensure that claims are not fraudulent. In fact, TPIs' commercial incentives will typically be to turn a blind eye where they can, in the absence of firm requirements to the contrary.

Paragraph 55 states that ORR's intention in the context of TPIs is to retain important protections for passengers, train companies and taxpayers, which is all welcomed. However, we are not convinced that the arguments in favour of TPI involvement in the industry are strong, principally because the areas where TPIs will be genuinely competing with operators form a limited part of the whole delay compensation process.

Q2. Should open access and concession operators (as well as franchise holders) be subject to the proposed licence condition? Should it apply to other holders of a passenger SNRP?

All passengers have their normal consumer rights under law, with the agreed delay compensation processes also available to them, so passengers retain their protections. Open Access operators are not obliged to run services and only do so because they are commercially viable. As a result, there is a risk that imposing additional costs on open access operators, by requiring that they are covered by the proposed licence condition, will jeopardise the continued operation of those services. We believe that the potential disbenefit to customers of this outcome outweighs the benefits to those Open Access customers seeking delay compensation. Even without a mandatory licence condition Open Access operators will still be under competitive pressure, as a result of franchised operators' requirements and improving compensation processes, to improve their own. Open Access operator compliance with the Code of Practice should therefore be optional. We agree that concession operators should be treated in the same way as franchised operators.

Q3. Do you have any comments on our initial draft of the delay compensation licence condition (in Annex A)?

Licence condition clause 1:

Open Access operators should not be required to comply with the Code of Practice, this should be optional.

Licence condition clause 2:

Open Access operators should not be required to accept claims through TPIs, this should be optional.

Considering the conditions for licence condition amendment or removal, at paragraph 62, it is not clear what baseline performance ORR is referring to (it might be clear for the passenger information requirements, but not in relation to, for example innovation and continuous improvement).

We would welcome more clarity of thinking around the criteria ORR will be using to inform any future decision about whether a Code of Practice should ever be withdrawn, and whether this is a reasonable expectation. For example:

- How can continuous improvement be maintained in the longer-term when there is a clear maximum level of delay compensation performance that, if reached, could never be exceeded?
- How close to this theoretical maximum performance would ORR consider sufficiently good performance that a Code of Practice might no longer be required?
- What level of fees or commission does ORR believe it is reasonable for TPIs to charge for their services, and is there a level above which the additional delay compensation protections for passengers are outweighed by the costs of TPI charges to claimants?

Awareness

Q4. Do the requirements and drafting for the provision of information

- **online**
- **on board**

- **in stations**
- **in person**

provide sufficient clarity and assurance for train companies and passengers?

We believe the requirements are generally sufficient and clear, subject to our more detailed comments below. What is not clear is the timing of when operators have to meet these goals by, i.e., when the Code of Practice will take effect, which has a significant bearing on their deliverability.

The Code of Practice requires action across all customer-facing areas of operators' businesses and where improvements need to be made, particularly in relation to staff training, these will take time to implement. There will also be a need for systems and technical changes. As a result, once the Code of Practice is finalised we anticipate it could take up to nine months for operators to prepare and put themselves into a position where they can comply with its new requirements.

Online

No comments.

On board

No comments.

In stations

Paragraph 71 states ORR “do[es] not specify exactly what method should be used to provide information – train companies are best placed to determine...” but this is not reflected in the CoP drafting. Annex B Provision 1.c.ii requires all of the methods mentioned (posters, leaflets, display screens and help points) to be used, which we believe is excessive as a universal requirement. Instead, operators should be given a choice, or the wording should otherwise reflect the more flexible intent described in paragraph 71.

In person

We sense some inconsistency between Paragraph 74 and 76 around the level of detail that staff are expected to provide in person. However,

we are content that the Annex B Provision 1 drafting is appropriate and reasonable.

**Q5. Is the list of the information requirements comprehensive?
What, if anything, should be added (or removed)?**

Yes, it appears to be comprehensive.

Annex B Provision 1.d.ii – We request the drafting be clarified to state that operators should only be required to list all the methods that they offer for passengers to claim delay compensation, rather than all methods (i.e., this should not include the requirement to advertise that passengers could apply to another operator for a refund, and that operator would be obliged to pass the claim back, nor a requirement for operators to advertise TPi's services). Otherwise, it would be very difficult to keep this information up to date and accurate. Our operators would also not want to advertise services of third parties when they cannot be sure of, and cannot influence, the quality of services of those third parties; customers who go to those third parties might complain that operators have directed them to a poor service provider or that the passenger incurred charges not applicable if they claimed directly.

Q6. Are the requirements for proactive provision of information by train companies during disruption clear and proportionate?

Are there any further requirements which should be specified?

In Annex B Provision 1.f.ii it is not clear what "in-train distribution of delay compensation details" might mean as a requirement beyond what is already covered by 1.f.i and the other on-board provisions, and we suggest it be removed. Operators would prefer passengers to submit claims electronically where possible as this speeds up response times, so systematic distribution of leaflets and/or claims forms would seem to be inappropriate and inefficient, albeit these should be available at stations for those who need them.

We note that on-platform and in-station announcements can be particularly problematic to tailor for individual services, each of which may or may not be delayed and where other time-critical announcements are also common, so we confirm the need for and

support the operator discretion in this area that the Annex B Provision 1.f.iii drafting provides.

In Annex B Provision 1.f.iv ORR might want to clarify how often it expects social media communications, as general information rather than related to a specific service – we would suggest weekly, or more frequently during periods of significant disruption.

We do not believe that any further requirements should be specified at this stage.

Q7. Any there any other requirements you consider would be necessary and proportionate to improve passenger awareness of delay compensation?

No, the requirements are significant in terms of information provision relative to industry best practice, significantly raising the bar for operators to an appropriate common baseline.

As noted at the start of our response to Q4, the question of when operators are required to comply with these requirements remains.

Claims process

Q8. Do you have a view on the timescales, and associated requirements for contacting passengers, we have proposed?

Timescale considerations for a clear and simple passenger proposition

We don't consider that ORR has made a strong case when it says in paragraph 85 that "A more demanding, reduced timescale of for example 15 or 10 working days may incentivise more passengers to claim and overcome any perception that the claims process is slow." ORR's own diagnosis of the factors in Section 1 identifies low passenger awareness and complexity of the claims process as the key priorities, rather than speed. We consider that simplifying the claims process for passengers implies passing complexity onto operators where this cannot be eliminated. So this points towards leaving timescales unchanged. In any case, response times in practice are

typically better than the existing target.

There is significant merit to maintaining broad consistency with the National Rail Conditions of Travel (NRCoT) for ticket refunds, paragraph 30.3 of which states “Your refund application will be processed without undue delay and any refund due will be paid within 14 days of your claim being agreed by the Train Company. Our target is to process all claims within one month of receipt.”

Similar wording is used in relation to delay compensation at paragraph 33.2, with a similar target, and we note that this is not a firm “requirement” as stated in paragraph 85 of your consultation document, except as introduced in Annex B Provision 2.a.

Consistency between refund and delay compensation is important because the ability to refund is itself closely linked to disruption and hence a passenger’s entitlement to delay compensation. As per NRCoT paragraph 30.1: “If the train you intended to use is cancelled, delayed, or your reservation will not be honoured, and you decide not to travel, you may return the unused Ticket to the original retailer or Train Company from whom it was purchased, where you will be given a full refund with no administration fee being charged.

This Condition applies to all Tickets, including Tickets (such as Advance Tickets) that are otherwise non-refundable, and also applies if you have begun your journey but are unable to complete it due to delay or cancellations and return to your point of origin.” Changes to the refund timeline do not appear to be under ORR’s current consideration and we suggest that changing the delay timeline alone will not have a significant impact to passengers’ perceptions of the ease of making a claim.

We know, in practice, that the time taken to process a claim depends on:

- The form in which the claim is made (e.g., online vs. paper form submission); and
- The quantity and quality of the evidence provided (where more evidence is quicker to process as it reduces the amount of checking required and provides further certainty that the claim is genuine, reducing fraud checking activities / overheads).

A one-size fits all approach to timing targets means timings have to be generous in order to accommodate the slowest, least convenient to process, submission options – even if the majority of claims are processed more quickly.

The fact that operators generally significantly out-perform their timescale targets is further reason why we believe ORR intervention is not required at this stage.

While the target timeline is not typically stretching for operators we believe it is more valuable for customers to have a worst-case backstop and that it is not efficient to require operators to resource for exceptional levels of demand at all times. The recent surge in demand for season ticket refunds as a result of coronavirus is a recent example of such a situation arising, and average refund times extending.

We see potential in perhaps developing an explicit link between the method and content of a claim submission, and its processing time. This would mean that claims which included specific evidence that a journey was made and was delayed, or attempted and abandoned (for example, geolocation data of the passenger's location at the point their ticket was activated – which would be available to some operators/TPIs), could have shorter processing times than paper-based claims using standardised forms and more limited evidence, and they might have different target response times. This would provide some modest incentive for passengers to provide information in the more efficient to process formats. It would more strongly incentivise operators and TPIs to share as much data as they had to support their customers' claims which would significantly reduce fraud risk. It would also encourage ongoing innovation, and we see this activity sitting firmly in the realm of operators' discussions with each other and with TPIs on, for example, the operation of the TPI Code.

Contacting a passenger for additional information

In relation to contacting the passenger about a claim to obtain additional information, the proposal that this should be completed within 5 working days essentially creates the requirement for all claims to be processed (at least initially) within this initial 5 day period. Pre-coronavirus, First Customer Contact was *[Redacted]*, with this fluctuating dependent on volume and backlog. The broader point is that this requirement would make the longer time period for processing the

whole claim largely irrelevant, where additional information was required.

If, as described in paragraph 86, the customer is given 20 working days to respond to a query without ‘stopping the clock’ on the claim, this would mean that any claim requiring a query back to the customer would risk breaching the overall 20 day claim processing target, even if this 20 day target were not reduced. The paragraph also expects flexibility to be applied, for example where the claimant has been in hospital. We are not clear how ORR would expect this to work in practice, whether claimants could be required to evidence their exceptional circumstances, and if not how operators could effectively enforce any time limit for a response.

Where ORR is proposing that a 5 day initial response time become a measured ORR SLA, while also penalising operators with a failure to process in time where the customer has not provided correct information, we believe this leans too far towards a “compensate at any cost” approach which ignores operators’ rights to reasonably determine the validity of a claim and calls into question the current and effective appeal processes. The principles of fairness and common sense need to be factored in to enable operators to deliver a simple, efficient and quick service. We believe the 5 day timeline proposed in Annex B Provision 2.b is too short and would require a claim to be handled multiple times in the course of its normal processing in order to be consistently met. In our view, the costs of this requirement to operators outweigh the benefits to claimants and the 5-day initial response time requirement should not be adopted.

Below, we show some First Customer Contact data. *[Redacted]*

The majority of rejected claims due to insufficient information are rejected because the uploaded image doesn’t contain all of the information required – the most common being that the ticket image doesn’t contain the price and the price cannot be traced back through industry systems.

Other times, the ticket image is blurry. This could possibly be mitigated at the outset of the claim process *[Redacted]*. This would need to be balanced against the ability for customers to submit their claim, and significant testing would be required to ensure we are not hindering the claim process unnecessarily for the majority of claimants. The

webforms already make clear the required ticket image information needed and *[Redacted]* it is unlikely that this would be offset through a reduction in overall transactions.

Under this claims handling model, as illustrated above, operators are tending to focus on eliminating the problem at its source, by preventing passengers for submitting incomplete claims in the first place. One obvious way to do this is to validate as much of the data as possible while the customer is entering it into an online form, for example.

In any event, the small percentage of claims affected suggests it is not a consideration for the majority of valid claimants and therefore does not have an impact on their perception of the efficiency of the process.

Process and efficiency consequences of timescale changes

We would also like to bring to ORR's attention the fact that operator processes are designed with the current targets in mind, and that where new targets or requirements are imposed this could be relatively onerous for operators to comply with. This is because systems will need to be modified to accommodate these changes, with cost implications.

We do not believe changes to the current systems or approaches to claims processing are justified, but if that is the outcome of this review we would be looking for clarity and certainty on requirements from ORR. Specific SLAs would need to be confirmed before, for example, First Customer Contact can procure any changes to its systems, *[Redacted]*. The risk is that operators will be required to engage in a significant amount of capital and revenue expenditure to "fix" a system that to a very large degree would appear to be running acceptably smoothly.

In particular, First Customer Contact, *[Redacted]*. This would, however, also significantly increase handling times and therefore processing costs.

An alternative approach would be to *[Redacted]*. While still costly, this might be more cost-effective in the short-term, but would necessarily be a very specific set of feature enhancements that would expose operators using the system to future costs if ORR requirements were to change. For example, our operators would be keen for ORR to confirm

that any requirement to not stop the clock was only to be applied in the event of “missing information” and not for other reasons (for example where no delay is found for the specified service or the delay was not the receiving TOC’s to process).

This additional proposed change to operators’ handling processes is also somewhat at odds with what operators understand to be DfT’s desire for them to pursue automation and process simplification. There is no evidence that requiring operators to change their current approach will reduce the number of rejections to any significant level or indeed reduce the number of unsuccessful claims overall.

First Customer Contact has produced some initial high-level estimates of the cost consequences of such a change, below.

Claim handling costs - Development and Charges

Current estimates for a delay claim with incomplete information which the customer then appeals by providing the required information, based on an online web-based claim.

Currently:

[Redacted]

Future:

[Redacted]

For hard-copy claim form claims where customers do not provide enough information on the form to process the information, the cost of customers being offered, and accepting, the opportunity to resubmit their claim information would increase these already inefficient claims by an estimated *[Redacted]* per claim.

The system development required is estimated to cost in the region of *[Redacted]* once ORR had made the scope of this work clear. It might be possible to *[Redacted]*, but this would likely delay the start of the development activity and disrupt other improvement plans in place that might otherwise be delivered in the intervening period.

This would be an inelegant solution and one that will become a major challenge to manage over the course of time *[Redacted]*.

It is strongly recommended that the ORR reconsiders any moves which

would require significant changes away from current operations, on proportionality and claims handling efficiency grounds.

In terms of communication back to the customer, referenced in paragraph 87, while we accept that around 15% of claims are not approved, there is no evidence presented as to why these are rejected. Operators need to guard against fraudulent claims, and it is right that they reject them. While it is clearly helpful to provide information back to the customer on how to challenge the decision if they disagree with it, the 15% rejection rate does not necessarily indicate a failure on the part of operators. We have provided First Customer Contact rejection data earlier in our response, at Q1, supporting this point.

Q9. Are the provisions on information requirements clear and proportionate? Do they provide sufficient flexibility to reflect the variety of claim and ticket types, whilst addressing the risk of unduly onerous information requirements?

Generally, yes, we agree that the provisions are clear and proportionate and allow operators to retain the flexibility they need.

We would emphasise the critical importance to operators of their fraud detection and prevention activity which will continue to drive the need to request a reasonable amount of data from claimants. We note that operators already have a cost incentive to keep the process as simple as possible while effectively managing fraud.

Paragraph 88 helpfully acknowledges that passengers should be providing proof to “demonstrate the passenger’s delayed journey.” In practice, this is a difficult thing for passengers to prove, and current practice is that operators normally allow a lesser level of proof as sufficient. A claimant is asked to provide evidence that they had a valid ticket for their journey, and sufficient details about the train they travelled on that the operator can identify that the train was delayed. They are not normally asked to provide *[Redacted]*. Group claims are typically allowed to be made by a single claimant, claiming for multiple tickets, *[Redacted]*.

This raises the complexity operators have to manage, that a non-refundable ticket may be refundable if a train is cancelled or delayed, and the passenger chooses not to travel (for whatever reason, which may not be connected to the cancellation or delay), but delay compensation is

only payable if the passenger attempts to travel and experiences a delay.

And the final complexity is that refunds are due to the purchaser of the ticket, while delay compensation is due to the passenger who experienced the delay, and these may be different people. So in order to ensure that a delay claim is correct, operators are entitled to confirm that the passenger attempted to travel and experienced a delay, and that it is the passenger that is the beneficiary of the claim.

So while it might be the case that ORR is looking to achieve further simplicity in the claims process, it is already the case that in these areas operators are taking a pragmatic approach in what they are asking passengers to provide.

Improvements in digital, smartphone and other technology do, however, open the door to operators collecting additional evidence to process as part of their claims assessments that might begin to include this. This raises the possibility that operators can begin to receive more data from the customer about their journey while simultaneously improving the simplicity of the claims process by reducing the data-entry activity associated with populating a form. We expect our operators to take this forward and develop these approaches as part of their continuous improvement activity.

Below, we show an analysis of the number of clicks to make a manual claim through First Customer Contact on a season ticket for a registered customer using BACS. The minimum-click scenario assumes that the customer has previously entered a ticket and saved their payment method.

Note, this development is ongoing to improve the incentive for customers to claim directly.

[Redacted]

We believe the click-requirements compare well, and it is clear from the above that this remains an area of ongoing focus for operators even in the absence of additional ORR requirements.

We note that the requirements of Annex B Provision 2.h and 2.i both require additional information to be included with or on the form which might not be interpreted positively by passengers, as they might view this

as distracting in the context of the form they are trying to complete. This could work against the principles that ORR is advocating operators adopt in paragraph 51 where “Research also suggests that simplicity in form-design and process can significantly affect response rates” and ORR might want to take this into account. For example, we suggest that expecting a customer to provide their name and address details should not be controversial and it is not therefore necessary to provide a justification for the requirement on the form. For other items, we agree a justification is more reasonable.

Q10. Is the provision on alternative forms of evidence clear - does it allow adequate flexibility for innovative solutions?

Annex B Provision 2.j raises location technology as a potential source of evidence. We believe operators should be open to innovative solutions, and additional forms of evidence such as this. Clearly, when provided in addition to the existing evidence required by operators for a claim it strengthens the quality of that claim and reduces the risk that the claim is fraudulent, potentially significantly.

If this is anticipated as an alternative to some other forms of claim data and if ORR is expecting claimants to approach operators in an ad hoc way, on an individual basis, we would have concerns about its compatibility with claim response timescales as it would be difficult to accommodate and would raise questions about why the traditionally accepted evidence was not also available.

We expect operators will innovate in this space, testing the value of additional information (for example, the time and location of the passenger when they activated their digital ticket, as evidence that they did experience a delayed journey).

One concern we have is that TPIs may not be so supportive of these efforts, particularly where TPIs are, or are affiliated with, Third Party Retailers (TPRs) that might have significant amounts of data about the ticket sale and the passenger’s behaviour. This is because TPIs are not as strongly incentivised as operators to identify and eliminate fraud, and industry experience of TPRs is that they are very protective of their data assets. If we are proved wrong, we will be delighted, but this remains an area of concern that could hold back the speed of innovation and claim simplification.

Initially, therefore, we might expect operators to use their own retail and customer data to identify which data items are of most use, and then use this as justification for more standardisation of this data as a requirement to support all claims where it is available.

In summary, we believe it does give sufficient flexibility for innovation while also cautioning that ad hoc approaches from claimants may not be compatible with established claim response timescales.

Q11. Is the provision on physical format claims clear and proportionate?

Yes, we believe it is clear and proportionate, noting that it is neither the most cost-effective nor likely the quickest format for passengers to submit claims, and would not be promoted as such in situations where the passenger has other options available to them.

Q12. Are the requirements with regards to online claim processes clear, proportionate and comprehensive?

Yes, these are clear, proportionate and comprehensive.

Q13. Any there any other requirements you consider would be necessary and proportionate to improve the claims process?

No, although operators remain committed to continuing to innovate in this area.

Continual improvement and reporting

Q14. Do you have a view on the requirement that train companies report annually on the steps taken to improve awareness and processes for delay compensation?

No comments on Annex B Provision 3.

On Annex B Provision 4, we believe this information is of relatively limited

value to passengers in convincing them to submit claims or to raise awareness of the claims process. Relative to the Annex B Provision 1 requirements, the additional information requested in paragraph 109 / Provision 4 is of a much less immediate practical value for any passenger considering a claim. It runs a risk of distracting from the active claim process that passengers may be considering if published alongside it as Provision 4.c requires.

We understand the information might be of use to the ORR, and of more general interest to the industry and passengers, so this might be reflected in where on operators' websites they are required to publish this information, by removing the requirement that it be published alongside the other delay compensation information.

Q15. What is your view of our proposals for passenger surveys?

- Is it proportionate to survey every claimant for their views on awareness and process?
- If not, what might the alternatives be e.g. specified number or percentage?
- Should these be standardised?
- How frequently should they be undertaken?

We have some concerns that adding an optional survey into the claims process is not consistent with the general theme of claim simplification. However, offering the option to all has process simplicity advantages. The main risk is that the opt-in nature of the survey will skew the results to a particular subset of claimants and might not be typical of all respondents in the way that the dedicated Transport Focus research was designed to be, for example. ORR should consider whether it really is a firm requirement that operators offer a survey to all claimants, because this would include TPIs among those required to be surveyed, and their responses might skew the results in a number of potentially artificial ways depending on whether and how they chose to respond. We suggest restricting this process to direct claimants, and considering a similar survey requirement for TPIs (with the results reported split by operator), would be more insightful.

If the purpose of conducting the survey is, as stated, for reporting to ORR covering the areas of claimants' awareness of their rights to delay compensation and the ease of the process, we expect ORR might want

to provide standardised questions for these topics. Consistent with comments in the paragraph above, ORR might consider adding a third question for both operators and TPIs covering the perceived value for money of the claims process. Operators would appreciate flexibility in adding additional questions to their surveys for their own continuous improvement purposes, that might be more diagnostic in nature, if they see fit.

Q16. Are there any other matters it would be helpful to seek information upon?

Please refer to the details in our response to Q15 above relating to TPI claimant surveys, to produce similar survey results to the operator requirements, split by operator.

Third Party Intermediaries

Q17. What are your general comments on what is proposed, bearing in mind ORR's twin objectives to harness the potential benefits of greater TPI involvement whilst retaining important protections for passengers and taxpayers?

Comments in relation to Licence Holder requirements in relation to TPIs

We note that ORR is strongly of the view that passengers should be able to appoint TPIs to facilitate their claims.

We note that the definition of Third Party Intermediary in Annex C Overview paragraph (a) could be construed to include operators themselves, because under the NRCOT operators are obliged to pass on claims incorrectly submitted to them that are intended for other operators. They are therefore facilitating these claims. We suggest that the definition is refined to exclude licence holders themselves from the definition of TPIs.

Operators are particularly concerned to protect the integrity of their existing delay compensation processes and, in particular, their fraud detection and management capabilities, so that they remain unaffected by the presence of an intermediary in the transaction. Operators are also concerned to manage their activities and costs efficiently.

In Annex B Provision 5.d it is not clear what form of standardisation the clause is referring to. We take it to mean TPI claims being standardised, in terms of substantive content, with those of the operator's own claims processes, and operators providing an equivalent mechanism for TPIs to submit claims through operator websites and/or some other mechanism such as an API. We agree that this is a sensible approach, because we view it as critical to the fraud prevention process in any claim submitted via a TPI, that the operator receives the same level of data about the passenger, their journey and their claim, as if they had applied to the operator directly.

This means that a TPI simply populating operators' existing website forms will not be sufficient; the TPI will need some way to identify its claim as being facilitated by a TPI and provide the TPI's contact and bank account details to be used for communication and payment associated with the claim. We are aware that some TPIs have historically tried to substitute passenger identification and bank account details in online forms with their own – which operators do not accept. Our operators view it as critical to their fraud identification process that bank payment or card repayment fields relating to the passenger's account will still be needed in order to successfully process a claim, even when the operator is not depositing any refund into this account directly. So, it follows that TPIs will need a consistent but different process to the current online forms designed for passengers to complete, in order to submit the same standardised passenger and journey information, while enabling those TPIs to provide the additional account and contact information and identify the claim as being facilitated by a TPI.

Passenger bank account and card details are extremely important in managing the fraud risk as they provide an auditable payment method. This supports the strategic fraud prevention and protection response against those accounts being used to commit fraud. At present we have the ability to freeze those accounts deemed to be suspicious on our systems.

The TPI client account, without the requirement to provide the claimant account details described above, removes this fraud function, significantly increasing operators' exposure to fraud risk.

First Customer Contact has a number of automated fraud rules
[Redacted]

In addition to these rules it is constantly having to evolve to respond to the changing fraud landscape, monitoring the system for suspicious claims through self-management. The additional areas where it seeks to protect against fraud risk are:

[Redacted]

Given the above, we believe that it is of critical importance that ORR's TPI-related proposals do not compromise operators' ability to manage fraud risk, and to continue to operate and innovate the fraud prevention strategies that they already have in place.

In Annex B Provision 5.g, where a licence holder believes that a TPI persistently accepts fraudulent claims and is not operating in accordance with the TPI Code, we believe the protections for operators need strengthening. The current drafting allows an operator to stop accepting claims submitted via that TPI, which would mitigate the impact of future fraudulent claims, but does not address the financial and other impacts on the operator of the historical fraudulent activity. We would like wording to be strengthened to include a redress mechanism that ORR could deploy as part of its complaint management process.

In addition, we believe it is reasonable that, where one operator identifies a TPI facilitating fraudulent claims, that there should be a mechanism for all operators to cease acceptance of claims from that TPI. Otherwise, the disincentive on TPIs will not be strong enough, and the proposed structure runs the risk of allowing TPI-facilitated fraudulent claims to persist over time.

Finally, we believe that the proposed approach will result in a particularly poor customer experience for claimants that risks undermining the benefits that ORR expects TPIs to deliver for the industry. The proposal allows for individual TPIs to get themselves into positions where they are accepted by some operators as operating in accordance with the TPI Code, but not by other operators. The impact on the customer experience will be at best confusing. They would be able to use that TPI to facilitate claims for some of their journeys but not for others. The implications of this on customers do not appear to have been explored. We would expect, at a minimum, that TPIs would be required to advertise to their customers which operators' claims they were able to facilitate at any point in time, and to advise their ongoing customers of changes in this status with respect to each operator. As the principal sanction for

operators to deploy in response to TPI disregard of the Code, this appears unattractive for all parties to deploy and close to unworkable in practice. ORR should consider other additional mechanisms and sanctions that operators could deploy that would enable this confusing and unhelpful customer outcome to be avoided, while still giving operators sufficient powers to ensure that TPI Code adherence can be enforced when necessary.

Once the requirements of the code are settled and relevant details agreed with TPIs, operators may need time to implement this website or API change to allow TPIs to submit claims on a standardised basis with direct passenger claims.

There are clear capability, resource and budget implications for systems changes, and to manage the process of engaging with, and cooperating with, TPIs.

Comments in relation to the TPI Code

In the definition of Claim in Annex C Definitions, we believe it would be helpful to make it absolutely explicit that a passenger has to initiate each separate delay compensation claim and confirm its validity in order for the TPI to submit on their behalf. Therefore a standing pre-approval for a TPI to identify and submit claims on a passenger's behalf without further input from that passenger should not be acceptable. This would mitigate the fraud risk of a TPI submitting claims that the passenger might know to be invalid.

We would expect the cooperation between licence holders and TPIs that is expected under the TPI Code to include detailed engagement between fraud representatives on both sides. For this to be effective we expect TPIs to make available to licence holders their processing rules through which passenger claims are run, as part of this process, in line with the TPI Code Overview paragraph (b) drafting that TPIs demonstrate their claims' suitability.

Q18. What are your comments on specific substantive policy proposals with regards to the appropriate standards for TPI firms, as listed below:

- **Transparency**
- **Process**
- **Evidence**
- **Data quality**
- **Payment method**
- **Data protection**

Transparency

It would be helpful for operators if the TPI Code Provision 1 included some requirement on TPIs relating to the accuracy of the data that they are to provide to customers.

In Annex C Provision 1.iv, it might be reasonable to expect TPIs to inform customers that they, the TPIs, will not facilitate fraudulent or duplicate claims (in line with the Provision 2.f requirement), in addition to the statements about fraudulent or duplicate claims not being acceptable to licence holders.

In general, our operators would wish Provision 1.v to be strengthened to:

- name them each specifically;
- on TPI websites and apps, for TPIs to provide a link to operators' individual delay compensation claims pages;
- inform claimants that claims should be submitted to the operator on whose services the claimant travelled; and
- make it clear that when submitting to operators directly the entire claims process is free of charge, not just the claim submission stage (to distinguish from TPIs who might submit free of charge on behalf of a passenger but then take a charge from any resulting claim payment).

In Provision 1.vii it might be reasonable to also expect TPIs to inform their customers of their statutory rights against the TPIs for the parts of the service that they are responsible for providing, as well.

Notwithstanding our comments on Annex B Provision 5.g, TPI Code Provision 1 should include the requirement for TPIs to inform their customers about which operators' services they are able to facilitate claims for, so that where claims from that TPI are not being accepted by a particular operator or operators, the TPI's customers or potential customers are made aware of this before initiating a claim through that TPI.

Process

[Redacted] – it is paramount that TPIs provide passenger details in order for licence holders to be able to determine the identity of the actual passenger, including any account or card details where compensation payments will ultimately be paid to by the TPI, before payment is made. We welcome the requirement in Annex C Provision 2.e that TPIs shall cooperate with licence holders and submit claims in a format that facilitates these necessary checks and processing.

In Annex C Provision 2.f it would be helpful to be specific about which parties it is that TPIs should be able to demonstrate their processes and procedures to. Presumably this is to licence holders, rather than ORR? Paragraph 130 suggests this is conditional on operators' reasonable suspicion of fraudulent claims, but we prefer the unqualified wording in Annex C.

In Provision 2.g the text requires that TPIs share "information about" duplicate claims or suspicious behaviour, without specifying the level of detail. Operators can manage fraud most effectively when they get full visibility of these claims and would prefer the wording to require that the content of any duplicate or suspicious claims be shared with the relevant operator. We expect that this would be in TPIs' interests if it enables the operator to identify a portion of these suspicious claims flagged by the TPI as being genuine, or at least worth submission for further scrutiny, but equally would prefer the certainty of having this drafted into TPIs' requirements to make the expectation clear.

Evidence

No comments.

Data quality

In order for the proposed TPI regime to be successful for passengers, the TPI claim submission has to be of high data quality. However, there may be little incentive for a TPI to ensure they capture and pass on high-quality data as they don't take responsibility for claim validation after submission. Lower data quality would lead to a lower level of automation and subsequently increasing handling costs for the licence holder and could also result in needing to contact the customer for more

information; this would all lead to increased claim response times if not standardised effectively. The CoP appears to provide for much of the cooperation necessary to enable operators to work with TPIs to resolve any such issues as they are identified.

Paragraph 130 references an industry best practice guide in addition to the CoP, the only reference to such a guide in the consultation document. We are unclear what this document is or what role it is expected to play in TPIs' activity.

We believe there is a role for such a document. We believe it would be helpful to establish a joint TOC/TPI fraud working party to manage specific fraud risks, for example through establishing and maintaining a joint TPI fraud prevention and protection policy, which would have the flexibility to meet the constantly evolving fraud risk landscape. This could form a part of the industry best practice guide that ORR refers to. In order to ensure TPI participation in such a group, we suggest that ORR considers incorporating this requirement into the TPI Code.

As mentioned earlier in our response to Q15, we suggest restricting the licence holder claimant survey process to direct claimants and incorporating a similar survey requirement for TPIs (with the results reported split by licence holder).

Payment method

It would be helpful if Annex C Provision 4.a could be clarified to make it clear that TPIs should make their customers aware of all of the payment options available from the operator and offer them all to the customer to select from as they prefer. Otherwise it appears counterproductive for ORR to be encouraging new and innovative forms of payment, such as the charity donations mentioned in paragraph 107, to encourage higher claim rates, if these options are never presented to the customer.

Data protection

This generally appears reasonable, on our understanding that as it is the operators processing the claims, they would be acting as data controller and data processor for this purpose.

Q19. What are your views on the proposed implementation

regime, including the expectation that TPIs and licence holders should work cooperatively to ensure compliance with the Code, and the proposed mechanism for resolving disputes.

We hope and expect that the TPI CoP will significantly raise the standards of TPI operation in the marketplace and that operators can develop cooperative and productive relationships with the full range of TPIs in the marketplace.

Several fraud risk areas of concern have already been identified in relation to *[Redacted]*.

Successful cooperation therefore depends on operators having the ability to determine the evidential standards necessary to support valid claims on a consistent basis across the different channels through which they receive them.

We expect there is joint work to do to define specific data sharing processes between TPIs and licence holders in order to ensure the sentiment of the code can be realised, for example, joint working to prevent and investigate fraud. The requirement for constructive engagement should help to improve standards all round, but given the examples above operators are expecting this to require significant resources to be committed.

Q20. What, if any, further measures do you consider necessary and proportionate to achieve the objectives?

No further comments or measures in addition to those already raised in response to the other consultation questions.

Drafting

Q21. Do you have any proposed amendments to improve the drafting and clarity of the licence condition, delay compensation code of practice, or TPI code?

Our specific comments have generally been picked up in the answers to

the earlier questions, summarised again here.

Licence condition

Licence condition clause 1: Open Access operators should not be required to comply with the Code of Practice, this should be optional.

Licence condition clause 2: Open Access operators should not be required to accept claims through TPIs, this should be optional.

Code of practice

Annex B Provision 1.c.ii requires all of the methods mentioned (posters, leaflets, display screens and help points) to be used, which we believe is excessive as a universal requirement. Instead, operators should be given a choice, or the wording should otherwise reflect the more flexible intent described in paragraph 71.

Annex B Provision 1.d.ii – We request the drafting be clarified to state that operators should only be required to list all the methods that they offer for passengers to claim delay compensation, rather than all methods.

In Annex B Provision 1.f.ii it is not clear what “in-train distribution of delay compensation details” might mean as a requirement beyond what is already covered by 1.f.i and the other on-board provisions, and we suggest it be removed.

In Annex B Provision 1.f.iv ORR might want to clarify how often it expects social media communications, as general information rather than related to a specific service – we would suggest weekly, or more frequently during periods of significant disruption.

We note that the requirements of Annex B Provision 2.h and 2.i both require additional information to be included with or on the form which might not be interpreted positively by passengers. We request a softening of the wording to allow some operator discretion so that, for example, claimants do not need to be provided with justification for why the more obvious pieces of evidence (name, address, etc.) are required.

On Annex B Provision 4.c, we believe this information is of relatively limited value to passengers in convincing them to submit claims or to

raise awareness of the claims process, and if published alongside the other delay compensation information required by the code, risks reducing the clarity of delivery of these other messages. We suggest the wording is revised to “Such information must be updated every 3 months, with data shown for performance over the previous year, and displayed online.”

Annex B Provision 4.d, ORR should consider whether it really is a firm requirement that operators offer a survey to all claimants, because this would include TPIs among those required to be surveyed, and their responses might skew the results in a number of potentially artificial ways depending on whether and how they chose to respond. We suggest the survey requirement should instead relate to passenger-claimants only.

In Annex B Provision 5.g, where a licence holder believes that a TPI persistently accepts fraudulent claims and is not operating in accordance with the TPI Code, we believe the protections for operators need strengthening to:

- include a compensation mechanism for losses caused to operators, where appropriate;
- allow operators to take coordinated, rather than individual, action against TPIs who fail to adhere to the TPI Code; and
- mitigate or avoid the negative customer and claimant outcomes that would result from having TPIs able to facilitate claims for journeys with some operators but not others.

TPI Code

In the Draft TPI Code summary of headings on page 55 we note that the headings are not consistent with those of the Provisions that appear on the subsequent pages.

In particular there is no monitoring and reporting requirement. We suggest it would be helpful if TPIs were subject to similar claimant surveying and reporting requirements to licence holders, and that Provision 3 of the TPI Code should be expanded to incorporate an equivalent requirement to that appearing in Provision 4.d of the Code of Practice for licence holders, with TPIs reporting their results split by operator.

It would be helpful for operators if the TPI Code Provision 1 included some requirement on TPIs relating to the accuracy of the data that they are to provide to customers. We believe TPIs should be proactive in their approach to this and apply their reasonable endeavours to ensure the information they supply to their customers is correct.

In Annex C Provision 1.iv, it might be reasonable to expect TPIs to inform customers that they, the TPIs, will not facilitate fraudulent or duplicate claims (in line with the Provision 2.f requirement), in addition to the statements about fraudulent or duplicate claims not being acceptable to licence holders.

In general, our operators would wish Provision 1.v to be strengthened to:

- name them each specifically;
- on TPI websites and apps, for TPIs to provide a link to operators' individual delay compensation claims pages;
- inform claimants that claims should be submitted to the operator on whose services the claimant travelled; and
- make it clear that when submitting to operators directly the entire claims process is free of charge, not just the claim submission stage (to distinguish from TPIs who might submit free of charge on behalf of a passenger but then take a charge from any resulting claim payment).

In Provision 1.vii it might be reasonable to also expect TPIs to inform their customers of their statutory rights against the TPIs for the parts of the service that they are responsible for providing, as well.

Notwithstanding our comments on Annex B Provision 5.g, TPI Code Provision 1 should include the requirement for TPIs to inform their customers about which operators' services they are able to facilitate claims for, so that where claims from that TPI are not being accepted by a particular operator or operators, the TPI's customers or potential customers are made aware of this before initiating a claim through that TPI.

In Provision 2.f we request the wording of the final sentence be clarified to say, "TPIs should be able to demonstrate to licence holders that they have sufficient processes or procedures enabling them to undertake this task."

In Provision 2.g we request that "including the full content of any related

claims” be appended.

We believe it would be helpful to establish a joint TOC/TPI fraud working party to manage specific fraud risks, for example through establishing and maintaining a joint TPI fraud prevention and protection policy, which would have the flexibility to meet the constantly evolving fraud risk landscape. This could form a part of the industry best practice guide that ORR refers to in paragraph 130. In order to ensure TPI participation in such a group, we suggest that ORR considers incorporating this requirement into the TPI Code Provision 2.

It would be helpful if Provision 4.a could be clarified to make it clear that TPIs should make their customers aware of all of the payment options available from the operator and offer them all to the customer to select from as they prefer.

Introduction

We note that RDG have submitted a response to the consultation document on behalf of the industry and in this respect, we would highlight that in the event of conflict between this document and the RDG response this document and its attachments should be taken as GTR's position. The key issues and rationale raised within the body of this document supports the following bullet points and issues concerning GTR:

- The CoP should be separated from the other elements raised in the document
- The industry could create its own DR CoP which the ORR would measure TOCs against
- TPIs are a separate matter and should be treated as such- if they are allowed into the marketplace then they should have to adhere to the already agreed CoP
- The introduction of an industry wide central claims portal is conceptual - a full feasibility study would need to be carried out considering the many issues we have raised in this document including costs and technical challenges

1. Executive Summary

- 1.1. The scope of the consultation is ambitious. GTR supports many of the aims of the consultation and believes that in order to achieve those aims the constituent elements which are being consulted upon must be addressed in a phased manner and be transparent as to cost and legal accountability.
- 1.2. Whilst clarity is required as to how the steps proposed would interact with existing requirements in this area, improving delay repay ("**DR**") awareness, processes and innovation are principles which GTR supports. Our view however is that these principles are best achieved by way of an intra-industry code of practice that specifically relates to codifying and standardising current metrics and activities and driving awareness to benefit customers. The inclusion of introducing TPIs and a claims portal should sit separate from the industry CoP and be considered as distinct and unconnected entities.
- 1.3. The consultation conflates two different types of third parties, TPI¹s and TPR²s. TPIs are already "in" the DR "marketplace", TPR's are not and may represent a step change in how TOCs interact with their customers by removing the direct link between the TOC and its customers. The industry is at a unique and potentially precarious point in its evolution. Passenger numbers are low and trust must be regained to increase those numbers. Fracturing the direct relationship between TOCs and their customers is not in the customer or TOCs best interests and is not a proposal that GTR can support.
- 1.4. GTRs position is that the proposed centralised claims portal (a "**CP**") is insufficiently described, costed or risk assessed to support at this stage. If the CP were to come into being it should not be mandated for TOCs which already have automated DR systems and should be self-financing in terms of set up and running costs by way of a proportionate, but not

¹ Third Party Intermediaries - commonly TPIs use their own user interface to submit claims on behalf of customers and are commonly "invisible" to [LSER/GTR]. The claim is processed by the TOC. Once a claim is received the TOC deals directly with the customer.

² Third Party Retailers - are ticket retailers who also wish to add DR payment to their customer offering. It is currently unclear, other than at a conceptual level, as to how this is to be achieved.

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prohibitive, levy on those who use it. Given current funding arrangements across the industry it is incumbent on all operators to act responsibly when incurring costs.

- 1.5. TPAs who wish to process claims or handle customer money should be subject to independent third-party scrutiny to ensure financial stability and rigorous governance and processes must be in place to protect customer money and to prevent/minimise fraudulent claims.
- 1.6. If the licence conditions were to be progressed, then industry contractual and regulatory arrangements must be amended to reflect that the TPA is the appointed agent of the customer to whom (properly constituted) DR claims are to be paid. Consequently, it must be transparent to customers that their rights are against the TPA (and not the TOC) if such payments are not received³.

2. Scope of Consultation

- 2.1. Three distinct issues are dealt with in the consultation:

- 2.1.1. Improving the “customer experience” of DR by increasing awareness, and the ease with which claims can be made and innovation in this area. The interaction of these proposals with existing obligations is not clear however GTR supports all steps designed to improve the passenger experience around understanding and claiming DR. However, a licence condition is not the appropriate vehicle to achieve these aims. Instead we would propose an industry developed CoP on these matters which the ORR measures TOCs against.
- 2.1.2. Codifying the obligations owed between TPAs and TOCs. In this respect we believe TPAs and TPRs are incorrectly combined as having a single common interest. TPAs and TPRs are likely to have differing interests and may view the potential rewards of participating in the “TPA CoP” quite differently. TPAs who are not ticket retailers may favour a simplified approach to the one proposed. It is GTR’s view that the integration of both TPAs and TPRs into the DR landscape could be managed by having them:
 - 2.1.2.1. Fully comply with the standards set out in the “intra industry” CoP proposed in 2.1.1; and
 - 2.1.2.2. demonstrate financial stability and rigorous governance and processes to standards assessed by the ORR / an independent third party where they are handing customer money or processing claims.
- 2.1.3. A centralised claims portal (a “CP”). Paragraph 7 below sets out [LSER/GTR’s] response in respect of the CP.

- 2.2. Whilst there is a degree of overlap there is also a lack of commonality in these issues and thus GTR believes that they would be better delivered in the manner set out in 2.1.

³ This will require changes to NRCOTs, Passenger Charter documents, Franchise Agreements and Licence conditions.

3. TPIs, Customer Experience, Trust and Relationships

- 3.1. GTR is a customer focused organisation. We strive to achieve the highest level of operational performance possible and, on the occasions that we fall short of that standard (whether or not through our own fault), it is important that we are able to regain the trust of our customers by clearly explaining the reasons why we have failed and compensating the customer appropriately. This may, at times of considerable disruption, include the provision of enhanced compensation. Inserting a TPI into this type of situation fractures the relationship and the ability of TOCs to calibrate its response to customers in an agile manner when severe disruption occurs. Breaking the direct relationship between the customer and the TOC may also give rise to a decrease in the levels of trust and satisfaction that customers have in TOCs / the industry, for example because TOCs will be left to deal complaints without the ability to compensate (as it has been paid by a TPI). Furthermore customers using a TPI may be placed at a financial disadvantage and receive less compensation under such circumstances.
- 3.2. Gaining and maintaining customer trust is always important, but particularly in the present post lockdown environment, where passenger numbers are significantly lower than pre lockdown levels. Any interventions which erode trust must be managed carefully. It is therefore a prerequisite for any TPI seeking to fully participate in the DR claims process that they must be accountable, stable, transparent and trustworthy, in short this means that:
 - 3.2.1. TPI terms and conditions with their subscribers must be transparent as to all aspects of their relationship (particularly the use of subscriber personal data), and ensure subscribers know the cost to the subscriber of claiming DR via the TPI rather than using TOC systems and that using a TPI to make a claim means that the responsibility to pay that claim is with the TPI (not the TOC);
 - 3.2.2. Industry documents, such as the NRCoTs, Passenger Charters, Codes of Practice must make it clear that the responsibility to pay DR is the TPIs when a claim is submitted via a TPI. TPIs are not an agent of the TOCs, and the NRCoTs and industry documents should be transparent on that point;
 - 3.2.3. TPIs will be handling money (which may well be public money), and as such appropriate security (e.g. bonds, guarantees, or letters of credit) should be in place to protect customers and the industry against any failure to reach its rightful recipient. Such security should also extend to holding TOCs harmless if TPI mismanagement results in claims against TOCs (e.g. due to TPI mishandling customer personal data) and
 - 3.2.4. If a CP is implemented TPIs should be required to adhere to prove (to an independent third party) adherence to robust information security standards to ensure the safety of customer data and to ensure that TOC IT systems will not be compromised. It is further queried how TPIs would use a CP in the event a CP is introduced.

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4. Single Industry Approach and Achievement of ORR Aims

- 4.1. GTR fully supports the ORR's position to increase awareness of DR, the ease with which DR can be claimed and the need for innovation in the sector. As our answer[s] to question[s] in the consultation demonstrate, we believe that as a result of the combination of years of expertise in handling some of the largest volumes of DR claims in the industry coupled with considerable investment in IT systems, we are at the forefront of the industry in these areas.
- 4.2. TPIs have been a part of the compensation landscape for many years. As Transport Focus research demonstrates they have not been responsible for any noticeable uplift or change in compensation awareness to customers within that time.
- 4.3. As the ORR's "Consultation on improving access to delay compensation" dated 30/6/20 (the "Consultation Document") notes "different delay compensation arrangements apply across the train operators". GTR have some of the most accessible, easy to use DR claims channels in the industry [and as such our position is that a licence obligation to accept TPI claims is not in the best interests of our customers, who already benefit, or are able to benefit from some of the most expeditious and reliable DR claims channels in the industry. To compel GTR to accept TPI claims when an efficient and cost-free alternative exists is inequitable.

5. Cost and use of public money

- 5.1. At present the majority of TPIs do little more than encourage customers to use their user interface as a route to submit a claim on our automated system, and this comes at a cost to the customer. In addition, due to the submission of fraudulent claims made via TPIs many TOCs must administer these claims and reject them at some considerable cost. The involvement of TPIs increases cost burdens on TOCs without adding value for the customer or TOC. For TPIs who maintain this model of operation thought should be given as to how TPIs make a proportionate contribution to the cost they generate within TOCs.
- 5.2. Establishment of a CP. New IT systems, processes and procedures, and the ongoing provision, support and maintenance of the same will mean costs for the industry. Whilst TOCs are party to EMAs these costs are taken direct from public funds. Careful consideration should be given to how any set up and operational costs that are incurred in a manner which is consistent with Government guidance on managing public money and the TOCs obligation to act as responsible operators. Thought should be given as to whether TPIs are required to pay a percentage levy on a per claim basis which could go to ensuring that the industry is "cost neutral" with regards to set up costs over a 3/5 year timescale, and that TPIs bear their share of the ongoing provision, support and maintenance costs.
- 5.3. In addition, the question of cost goes beyond the matters referred to above.
 - 5.3.1. As the TPI method of working is not uniform or proscribed it is difficult to provide a comprehensive response to ORR on what costs might be incurred. For example, a TPI that stays out of a CP may request links into TOC back office systems to extract data needed to verify claims, this would give rise to system development costs for the TOC and Information Security issues. These costs will need to be allocated appropriately. Where a CP is to be set up the cost picture becomes even more complex.

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- 5.3.2. TOCs like GTR who have invested heavily in automated systems may be left with stranded costs and/or an additional cost burden to adapt those systems to any new industry system. This results in a perverse situation whereby those who have led the industry in automation and serving customer needs will be penalised with a cost burden for doing so. This is inequitable and discourages TOC investment and innovation.
- 5.3.3. TOCs with automated systems may have outsourced suppliers of these services, if TOCs are compelled to participate in an industry “back office” then there may be increased costs or termination costs (including, potentially, redundancy/TUPE costs) involved in extracting itself from those contracts.
- 5.3.4. TOCs should not be expected to bear the cost of lack of TPI governance or poor practices. TPIs need to be of sufficient financial standing to give reliable financial protection (such as indemnities) to the TOCs should TPIs fail to pay monies on to customers or be responsible for TOCs suffering losses due to TPI act or omission.

6. Disputes, TPI scrutiny and TOC regulatory compliance.

- 6.1. Para 140 of the consultation summarises how TOCs who have concerns as to a TPIs compliance with the CoP are to address those concerns.
- 6.2. The onus is on TOCs to identify and segregate CoP compliant TPIs from non-compliant TPIs. It is not clear how this will be possible. In addition, once TOCs suspect a TPI of being non-compliant the TOC is expected to continue to deal with and process the claims of the TPI until such time as the dispute is resolved. In the case of a bad actor / inefficiently professional TPI the obligation to continue to cooperate during this period leaves customers and the TOCs exposed to the risk of paying money to an organisation which should not be receiving it.
- 6.3. In terms of compliance at a “claim” level the burden again falls to TOCs. This is technically challenging when processing is designed to be automated (to more easily meet handling times and promote the efficiency ORR seeks) and presents possible expensive IT system development work. If the CoP is to work, then it is recommended ORR introduces measures to ensure only compliant organisations can enter the market and compliance is not optional.
- 6.4. To remove these concerns clear standards in addition to the CoP to which TPIs must adhere in respect of claims and governance are to be established and TPIs must be audited against them not less than annually, the cost of which would be either paid by the TPI upfront or via a levy on a per claim basis.
- 6.5. TOCs should not bear the regulatory risk where they are unable to adhere to Licence / Franchise requirements where DR is not paid to customer by a TPI (having received the same from the TOC), or TOCs are unable to pay valid customer DR claims due to TPI intervention. The Licence and Franchise Agreements will need to be amended to address this issue.
- 6.6. Fraud: generalised CoP commitments to prevent fraud on behalf of the TPI are insufficient, TOC knowledge should be used to establish a minimum set of requirements to which a TPI must adhere as part of an annual audit (see 6.4 above).
- 6.7. Where TPI’s fail to spot fraudulent claims, they should bear the cost.

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7. Centralised Claims Portal

- 7.1. The CP (referred to at para 91 of the Consultation) is only a high-level concept at present. Establishing, transitioning to, maintaining and operating any such system is likely to be very costly. It would therefore need to be fully scoped and subject to a full business / investment case, in addition to any analysis requirements which may flow from the current funding arrangements in place in the industry.
- 7.2. GTR contend that if there is to be a CP it should not be a licence condition to have to participate for those TOCs who already offer automated DR.
- 7.3. A CP would bring information security, data protection risks and potentially competition law risks which would have to be robustly managed but cannot be subject to any analysis until the proposed scope and operating model of such a CP is known.
- 7.4. Having a CP would penalise TOCs who have invested heavily in their systems and reduce standards to the lowest level, stifling agile innovation which TOCs such as this one can and do deliver.

Rail Delivery Group



Rail Delivery Group response to:

**The ORR Consultation on Improving Access to
Delay Compensation**

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Introduction

1. The Rail Delivery Group (RDG) welcome the ORR's interest and desire to improve access to compensation and are grateful for the opportunity to contribute to this consultation.
2. The industry wants customers to get the compensation they are entitled to and are working together to boost awareness and make the process quicker and easier. Through initiatives by Train Operating Companies (TOCs), compensation claims are already increasing. Nationally, 358 delay claims were closed per 100,000 journeys in 2019-20, an 18.5% increase over the previous year and 98.6% of delay claims were closed within 20 working days, a 3.2 percentage point increase. Further DfT data shows that since 2016 satisfaction in the form by which compensation was paid out increased by 30%, value 15%, method of applying 8% and information on how to claim 9%.
3. While recognising these increases, TOCs continue to welcome any changes that lead to improvements in customer outcomes. With this in mind, this document outlines some high-level principles we would expect the ORR to take into consideration when looking to improve access to compensation and improving the customer experience.

Section 1 – Delay Compensation Licence Condition

4. Whilst consistency has broad appeal, consideration of flexibility in how the Code of Conduct is delivered is imperative. Being overly prescriptive may preclude TOCs, who have aspirations to improve communication with customers, from developing more innovative techniques.

Section 2 – Increasing Customer Awareness

5. TOCs are committed to ensure customer awareness of delay compensation. Agreeing a new Delay Repay (DR) Best Practice Guide with a key focus on awareness is evidence of this. However, we would appreciate more clarity on the ORR's expectations of what information would need to be included while still allowing TOCs to set standards based on what is best for their customers.

Section 3 – Improving Claims Processes

6. We welcome the ORR's proposed approach to improvements in the compensation process by reviewing timescales and information requirements. However, any change in this area should be based on making the process more efficient, timelier and with consistent targets for TOCs.

Section 4 – Continual Improvement and Reporting

7. We are supportive of some elements proposed in this section and RDG has formed a working group in this area. As to publishing the recommended compensation data, we believe this information is of relatively limited value in convincing customers to submit claims or to raise awareness.

Section 5 - Third Party Intermediaries (TPIs)

8. In principle, we are not opposed to claims companies entering the market. However, it is essential that any assessment is evidence based and takes into consideration the high-level principles we have outlined in this document to prevent the system from becoming too complex and creating a marketplace customers do not benefit from.

9. We have very much appreciated the highly constructive engagement between the ORR and Industry members when discussing improving access to delay compensation. We trust that this input is helpful and are happy to explain any aspect of this response which you may wish to discuss in further detail.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C O'Beirne', written on a light-colored background.

Craig O'Beirne
Head of Support and Redress | Rail Delivery Group

Section 1: Delay Compensation Licence Condition

Summary

In this chapter we set out the case for introducing a licence condition on delay compensation. We draw upon the evidence of consumer detriment and concern, and the benefits available to customers and train companies which could be derived from the licence condition.

Q1. Is there any evidence that we have not considered which may be relevant to this chapter?

10. Train Operating Companies (TOCs) believe that Delay Repay (DR) is a good scheme. Customers value train punctuality highly and it is right that recognition is given for those whose journey is delayed. Further, TOCs agree there is a perception that some may be unaware of their entitlement to claim or that the claims process can be onerous. Bearing this mind, this chapter is relevant and demonstrates the need to look closely at these issues to see if reform in the way the ORR is proposing is the correct way forward.
11. That said there are a range of customer experiences and consequences as a result of delays:
 - Work by Transport Focus shows that satisfaction with punctuality falls about 2% per minute of delay, but this is from a relatively high base and even at 15 minutes the majority of customers say they are satisfied.
 - The conditions under which delay is experienced is a key factor. Those who have a seat and are able to do something productive or enjoyable are more likely to remain content than those who are not.
 - How customers are dealt with during delay is also key. Around half of customers say they are still very or fairly satisfied if they believe the delay was handled well.

Reasonable Awareness Levels

12. TOCs know how important it is to customers that trains run on time and want them to get the compensation they're entitled to when that doesn't happen. To increase awareness and encourage an uptake in claims TOCs have employed several strategies including:
 - Making more announcements on trains, handing out claim forms, using Twitter and sending email reminders to people who booked online.
 - Using Messenger, National Rail proactively notifies customers who create an account of eligibility for compensation and provide a link to the TOC's compensation page.
 - Running two awareness campaigns with promotion on National Rail social channels and on the back of tickets reaching 25m customers.
 - TOCs have invested heavily in their claims web portal systems to make the process easier for customers to make a claim. In fact, TOCs such as GTR (the first TOC to process in excess of 1 million claims p.a.), have more than 5 million unique claimants in their data base. Based on these figures It would appear that GTR customers have high awareness given the numbers of claims received.
 - Avanti, c2c, Gatwick Express, Great Northern, Northern, Southern, South Western Railway,

Thameslink and Transpennine Express are among the train companies to offer some form of automatic compensation.

Data from the Department for Transport shows these initiatives are working and have driven up the amount of compensation paid by 75% over the last three years.

Economic Considerations

13. A key rationale for providing compensation when services in any industry are not of the expected standard is to retain the goodwill and continued business of those affected. In that respect, there is a question of how best to allocate funds to achieve the best outcome. The proposition outlined in the consultation document is that increased claims are the right outcome. This does not consider whether this increased cost may be better invested improving the customer experience during delay. It may also be prudent for the ORR to take this opportunity to consider options other than DR, such as a discount on expiry of a season ticket should performance fall below certain targets. This would be a one-stop process ensuring compensation is paid back in one larger sum. However, while this would satisfy customer expectations while reducing processing costs for some operators, for others who already have a Passenger Charter applicable to season tickets linked to performance measures, this may be expensive to incorporate and require long lead times to put into place.

Third Party Intermediaries (TPIs)

14. TPIs have been part of the DR landscape for many years and there is no evidence they have increased customer awareness or will in the future. Agreeing to a CoP for TPIs will take time and resource. TOCs have been working collaboratively with a TPI to determine the customer benefit for this proposition and if it is in the best interest of the customer. This has included looking at the technical viability of the proposal and how they would operate in the market and have asked several questions that remain unanswered. TPIs appear to be suggesting introducing levels of administrative burden on the TOCs who already have well developed processing engines and trained advisors in place to accommodate TPIs with no clear proven benefit for the customer, but rather to benefit TPIs who charge a fee for a service that TOCs provide for free.

Q2: Should open access and concession operators (as well as franchise²⁹ holders) be subject to the proposed licence condition? Should it apply to other holders of a passenger SNRP³⁰?

15. In principle, for consistency from the view the customer, the proposed licence condition should apply to Open Access (OA) and concession operators. However, whilst consistency is understandably preferable, this creates risk for additional costs to OA operators and it would be unreasonable for OA operators to be liable for DR unless they are compensated proportionately by Network Rail. For concessions, this would be a matter for the awarding authority and the financial terms under which they would wish the concession to operate. For OA operators the preferred approach should be that they are not subject to the proposed licence condition, but would have the option to opt in.
16. In the event the licence condition is considered applicable to OA operators, then:

- a) the licence condition should not, either now or in the future, seek to mandate specific terms, eligibility thresholds or entitlements offered via the OA operator's delay compensation scheme. This should remain as now where minimum standards are specified through the NRCOT and OA Operator's policies are set out in their Charter; and
- b) the licence condition should include appropriate protection such as "Nothing in this condition shall oblige the SNRP holder to undertake any action that entails excessive cost, taking into account all the circumstances including the nature and scale of licensed activities". This is the same protection as is written into the current licence condition applicable to DPPP/ATP.

Q3: Do you have any comments on our initial draft of the delay compensation licence condition (in Annex A)?

Overview

17. TOCs operate DR Schemes in response to the franchise or concession authorities' requirements. Therefore, we believe that concerns expressed should be raised and progressed through existing Franchise Agreement processes or, as an alternative, that any new requirements can only be implemented once existing requirements within Franchise Agreements are removed. Further, while we agree where TOCs are responsible for delays they should be penalised, the proposed delay compensation licence condition fails to link the customer interest effectively with the main cause of delays, namely those attributable to railway infrastructure managed by Network Rail.

Third Party Intermediaries

18. Whilst we welcome change where it is in the best interests of our customers, we are yet to be assured that enabling TPIs to process DR on behalf of TOCs is indeed in the customer's best interest as TOCs provide this service for free and firmly believe that customers should get 100% of the compensation they are due. We request further evidence that the involvement of TPIs would be of positive benefit to the customer; including (where available) evidence from other industries, such as aviation.

Awareness

19. TOCs are committed to spending time and resource to ensure that customers are aware of their entitlement to claim compensation when journeys do not go as planned. This is evidenced by the Industry agreeing to a new DR Best Practice Guide with a key focus on awareness and making it easier to claim. However, we would appreciate more clarity on what the expectation would be as far as what information would need to be included on the suggested posters, claims forms and online. TOCs have agreed to place posters in stations where they are able to do so, place information onboard either on posters, vinyls or information screens as appropriate and to make announcements when and where it is safe to do so. However, TOCs should have the ability to determine the best approach for their customer base and be able to define standards relative to their operational circumstances.

Continual Improvement

20. RDG has formed a working group with TOCs to assist in this area. Best practice is shared among TOCs and any pilots are also discussed along with lessons learned. As to reporting overall, TOCs do not have issues with this but would like to highlight that this will bring with it additional reporting costs.

Section 2: Increasing Customer Awareness

Summary

In this chapter, we set out the case for making improvements to ensure that customers are aware of their rights to delay compensation. We also set out the draft proposals in the CoP designed to achieve those improvements.

Q4: Do the proposals for the provision of information:

- online
- on board
- in stations
- in person

provide sufficient clarity and assurance for TOCs and customers?

21. TOCs agree that communication is key to ensuring that customer rights and entitlements for DR are clear and that there should be a uniform approach across the industry. However, any changes to committed obligations as a result of future rail contracting mechanisms provide an opportunity for consistency and it has been suggested that the ORR should not make changes in advance of this. Also, it is important to highlight that it is likely that pandemic related messaging will be the most important feature of travel for some time to come. Customers will want this reassurance plus high-quality, real-time travel information ahead of a reminder about DR which affects less than 5m out of 1.7bn journeys. (0.3%). With this in mind it may be best to have a clear focus on reactive messaging for DR – i.e. put the effort into making sure that delayed customers hear and see this messaging.
22. **Online:** All TOCs want customers to get the compensation they're entitled to when they experience a delay. To encourage customers to make a claim when journeys do not go as planned TOCs have undertaken significant steps to improve information provision on customer facing website and overall compliance in this area is high. We would welcome booking engines and non-TOC booking channels to also be required to make information easy to access as well as point directly to the TOC or TOCs who operate the services offered to ensure all customers are aware of their rights and entitlements when journeys do not go as planned.
23. **Onboard:** On train facilities are variable dependent on rolling stock. However, TOCs have agreed to promote DR on posters, vinyls or information screens where possible to provide information on the DR compensation process and that this should be a constant presence. Where TOCs have newer rolling stock many have integrated this messaging into the PIS. That said, it is difficult to ensure continuity of experience as a customer may subsequently travel on older rolling stock where this facility does not exist. It is important to note that if a one-size-fits-all approach was suggested, it would have to be a requirement based on what is possible on the oldest rolling stock where the PIS is least effective and may lead to less innovative solutions.
24. **In Stations:** Station facilities are variable and prime poster board sites are, quite rightly, reserved for key information. However, TOCs agree where possible that information on the compensation claim process should be a presence at stations.

25. **In person:** There seems to be some inconsistency between Paragraph 74 and 76 around the level of detail that staff are expected to provide in person. However, we are content that the Annex B Provision 1 drafting is appropriate and reasonable.

Q5: Is the list of the information requirements comprehensive? What, if anything should be added (or removed)?

26. The information requirements are comprehensive with enough clarity to ensure that customers receive a good level of awareness across the industry. However, we feel that the list within this proposal may be too comprehensive. A less prescriptive approach would allow TOCs to determine how to best meet customer needs in the variable environments they operate in and lead to more innovative solutions. Consideration of digital channels which have become a popular communication tool for customers and TOCs alike is one example. These online channels may also be best suited for the provision of the full details relating to delay compensation as requested in section 1, paragraph D of the Draft Code of Conduct. In many cases this request would be difficult to fully accommodate on printed media due to the amount of information requested and the limited space available. Instead it may be more appropriate to use this media to signpost customers to where they can find the full information as it is more accessible and achievable online.

27. Regarding adding information about delay compensation during the booking process, TOCs believe that providing this information in the booking process would provide a negative first impression that may set the customer expectation that their train will be delayed when this is usually not the case. Instead, it will be more useful to provide such information in an after sales communication.

Q6: Are the requirements for proactive provision of information by train companies during disruption clear and proportionate? Are there any further requirements which should be specified?

28. Overall, the requirements are clear however it should be recognised that during disruption the focus needs to be on ensuring safe crowd management and that train dispatch processes are prioritised. Safety critical activities cannot be compromised. TOCs are also exploring electronic ways to provide DR messaging and confirm the need for TOC discretion in this area that Annex B Provision 1.f.iii provides. This would help overcome existing challenges around making tailored announcements, for example at unstaffed or partially staffed stations.

Q7: Any there any other requirements you consider would be necessary and proportionate to improve passenger awareness of delay compensation?

29. The requirements are considerable and rightly so in order to drive industry wide improvement. All TOCs believe it is right that customers are aware of their eligibility when journeys do not go as planned and continue to invest in a variety of ways to increase customer awareness of delay compensation. This includes:

- Dedicated DR webpages that clearly outline when customers may be eligible and how to claim.

- Introducing innovative solutions such as the option to donate claims to charity to encourage additional claims.
- The LNER CEM which reaches 100% of direct booking customers delayed.
- 'Alert Me' which informs customers of eligibility for DR when journeys do not go as planned and also provides crowding information through Messenger and has recently been approved to also send notifications through WhatsApp and SMS channels that are available to all TOCs.
- GTR and Southeastern have invested in new systems with applications taking less than 10 seconds via the web form.
- Plus, other solutions such as Automatic Delay Repay (ADR), using emails, push notifications, social media and other means of alerting customers of entitlement to claim.

TOCs also monitor awareness through customer satisfaction surveys and use this insight to further develop innovative solutions to build awareness.

Section 3: Improving Claims Processes

Summary

In this chapter, we set out the case for making changes to improve the processes for claiming delay compensation. We also set out the draft proposals in the CoP designed to achieve those improvements

Q8: Do you have a view on the timescales and associated requirements for contacting customers that we have proposed?

30. While TOCs understand why the ORR may believe that a reduced timescale for processing DR claims may incentivise more customers to claim, there is significant merit to maintaining broad consistency with the National Rail Conditions of Travel (NRCoT) for ticket refunds. If timescales were reduced specifically for DR claims this would lead to:

- one target from the ORR for DR claims
- a different target from the ORR for complaints
- an additional target from the Rail Ombudsman for complaints; and
- the ability to ‘stop the clock’ for some but not others

A better resolution may be one standardised target to allow for consistency and to remove confusion. The ORR’s own diagnosis of the factors in Section 1 identifies low awareness and complexity as the key priorities and these should remain the focus.

31. In regard to the proposal to contact a claimant within 5 working days when relevant information is missing, it is reasonable for TOCs to see if we could assess these claims within five working days understanding that this would be based on volumes and our aim to process claims as quickly and efficiently as possible to ensure customer satisfaction. In many cases claims are automated and approved on submission to ensure a timely resolution for customers. The remaining claims are referred to advisors to review and are worked through by age and in date order so we do not know what is required until we manually assess the claim. However, in the interest of providing the best customer experience possible, TOCs could look to see if this proposal could be implemented with the understanding that our goal is to process all claims as quickly and efficiently as possible to ensure customer satisfaction.

Q9: Are the proposals on information requirements clear and proportionate? Do they provide sufficient flexibility to reflect the variety of claim and ticket types, whilst addressing the risk of unduly onerous information requirements?

32. The provisions are generally clear whilst allowing TOCs the flexibility required. This flexibility is important as it allows TOCs sufficient room to innovate and improve the claim experience. While a standardised claim form may be viewed as desirable, many TOCs operate different DR systems by which forms automatically integrate with wider systems. Having a standard form would lead to a complex and onerous process with high costs and this should be taken into consideration. It also

should also be noted that the richer the dataset provided, the greater the ability the TOC has to be resistant to fraudulent claims. Any trade-off could be that we ask for less information up front but then need to ask the customer follow-up questions delaying our resolution.

Q10: Is the provision on alternative forms of evidence clear - does it allow adequate flexibility for innovative solutions

33. TOCs agree that we should be open to innovative solutions, and additional forms of evidence. Clearly, when provided in addition to the existing evidence required by TOCs, alternative forms of information strengthen the quality of the claim and reduce the risk it may be fraudulent. However, there would need to be agreed industry standards and TOC systems would need to be able to accept this evidence. If changes to systems were required, it may be more fiscally sound to proceed at the same pace as development of digital ticketing so that there can be alignment in the development costs, reducing the burden on taxpayers and farepayers.

Q11: Is the provision on physical format claims clear and proportionate?

34. TOCs believe it is mostly clear, noting physical forms make up a very small percentage of claims received and are neither the most cost-effective nor the quickest format for customers to submit claims. If TOCs will be required to accept forms from other TOCs and pass them on, this needs to be made clear so processes can be agreed to ensure a timely resolution for customers. We would also need to understand when the clock would start in these cases as this would inevitably lengthen the time to complete the claims process.

Q12: Are the requirements with regards to online claim processes clear, proportionate and comprehensive?

35. The requirements are clear and comprehensive however are not viewed as proportionate by some TOCs based on the number of claims processed on average. For those such as GTR, who were the first TOC to process in excess of 1 million claims p.a., they have upgraded their online DR portal to vastly reduce the effort required to submit a claim. Other TOCs are currently looking at solutions that would meet the requirements in Provision 2 n. v. of the Draft Code of Conduct. However, for some TOC booking systems not integrated with DR systems, data transfer would incur significantly high development costs which are seen as disproportionate when compared to the number of claims received on an annual basis. TOCs would suggest that if the provision is made for customers to be able to save their delay compensation claim details in their online account, that they would then be able to pay any compensation due to this same account. This would represent significant benefit to the industry as it would drive customer retention and justify the investment for those currently viewing the proposal as disproportionate. This is also the business model presented by a TPI and, if allowed to proceed with this, consideration should be given for TOCs to have this same ability.

Q13: Any there any other requirements you consider would be necessary and proportionate to improve the claims process?

36. In regard to one industry system, this has some support especially through a well-known, central portal such as NRE. However, in purely practical terms when considering all of the different systems working in the background for multiple TOCs and the different back office smart product systems, this would be cost prohibitive and technically challenging. It could also create issues such as a lowering of standards, TOCs losing a line of accountability with their customers, stifling the speed of response and detracting from innovative new ideas that would benefit the customer as TOCs would need to consult on any upgrades or changes to the system put in place. Overall, TOCs believe the responsibility should remain with them to explore and where possible further innovate in this area.

Section 4. - Continual improvement and reporting

Summary

In this chapter, we set out our expectation that train companies should seek to improve, and report upon, their performance. We also set out the draft proposals in the CoP designed to ensure that they do so.

Q14: Do you have a view on the requirement that train companies report annually on the steps taken to improve awareness and processes for delay compensation?

37. Generally, TOCs do not see any reason we would be concerned sharing this information publicly. However, we would like the ORR to evidence how supplying these reports would directly increase customers claiming DR. As compensation is relative to the cost of the ticket, the information is not comparable to that provided by any other TOC so is not particularly useful to customers. If it was just stats on our websites, we don't think this would be impactful, but if we used the positive stats to support a marketing campaign that might be more successful.

Q15: What is your view of our proposals for customer surveys:

- **is it proportionate to survey every claimant for their views on awareness and process?**
- **If not, what might the alternatives be e.g. specified number or percentage?**
- **Should these be standardised?**
- **How frequently should they be undertaken?**

38. TOCs believe this could give a clearer picture of awareness and claim rates, however it is understood from the consultation document that the proposal is for the survey to be included within the original DR claim. We would therefore highlight that the timing would not allow a claimant to provide their full feedback on the claims process, but rather only their awareness and the initial claim submission process. Further, adding a survey which would necessitate providing further information would be in stark contradiction to the proposal of claim simplification.

If not, what might the alternatives be e.g. specified number or percentage?

39. TOCs have put forward the following suggestions:

- Potentially leisure purchasers could have a link to opt in, whilst season ticket holders could be surveyed at the time of ticket renewal.
- 10% of claimants as long as this delivers a minimum of more than 200 responses per period.
- Claims could be triggered following a set number of successful claims being made. For example, after 5 successful claims a survey could be sent to customers which would enable customers to provide feedback on the full claims process.

Should these be standardised?

40. If the purpose of conducting the survey is to understand customer awareness of their rights to

delay compensation and the ease of the process, we expect the ORR might want to provide standardised questions for these topics. TOCs would also appreciate flexibility in adding additional questions for their own continuous improvement purposes that might be more diagnostic in nature.

How frequently should they be undertaken?

41. There is a variety of opinions in this area. Some TOCs have suggested surveys should be sent on an ongoing basis enabling TOCs to review the impact of any innovations to drive improvement, while others suggest that quarterly reporting would be best. There is also thought that individual claimants only be surveyed a maximum of once per year to avoid survey fatigue. We would suggest that MRA guidelines and best practice would provide the most suitable advice around frequency.

Q16: Are there any other matters upon which it would be helpful to seek information?

42. TOCs suggest that different survey versions may be appropriate dependent upon the claim or journey history of the customer. This could be a simple self-select filter question at the start of the survey. For example, a customer who travels infrequently may note posters and announcement, whereas a commuter who regularly claims may, due to this, not 'see' or 'hear' awareness activities. Without such a filter question this may skew results or impact the usefulness of insights. The ORR's experience with complaints categorisation and clear definitions is useful to factor into any proposed survey approach. The ORR's experience with their complaint handling summary would also be valuable to review and apply to the survey proposition being considered.

Section 5: Third Party Intermediaries

Summary

In this chapter, we set out our proposals for introducing a requirement in the delay compensation CoP to oblige train companies to accept claims from Third Party Intermediaries (TPIs). We also set out the draft proposals in the CoP designed to achieve those improvements, together with the requirements of the Code of Conduct to which TPIs must adhere.

Q17: What are your general comments on the proposals, bearing in mind ORR's twin objectives to harness the potential benefits of greater TPI involvement whilst retaining important protections for passengers, train companies and taxpayers?

43. Industry Members welcome any development that improves the customer experience. However, as the current Delay Repay (DR) compensation system operated by TOCs is provided for free, we need to be assured that any development that would allow TPIs to deliver DR compensation on the Industry's behalf is indeed in the best interest of the customer and would raise awareness and improve processes. It is imperative that we consider first and foremost what is truly in the best interest of the customer and making the process easier and increasing awareness should be prioritised. To ensure this approach and to avoid any confusion or friction, there are some high-level principles that we would request the ORR to take into consideration and for TPIs to adhere outlined below:
44. **Maintaining the relationship with the customer:** The public must be able to trust the competence of rail organisations and their commitment to delivering high quality service. The CoP should oblige TPIs to indicate that the compensation is coming directly from the Rail Company and provide the ability for the Rail Company to reach out to the customer directly to have the opportunity to convert opinion and regain customer confidence in the operator.
45. **Consequential loss:** The CoP should provide guidance on TPI responsibilities for the occasions when claims are 'multi-faceted' and include complaints with regard to other aspects of a journey. TPIs would not be able to make a judgement in these situations so a process would need to be agreed to address this issue without risking a fractured communication channel or a disjointed experience for customers.
46. **Ensuring DR Compensation is Paid to the Correct Party:** The objective of DR is to compensate the traveler for unforeseen disruption. TPIs would need to have systems in place to ensure any compensation due was paid to the genuinely affected customer. We also believe it would be helpful to make clear the customer has to initiate each separate claim as valid and that standing pre-authorisations are not acceptable. This would mitigate the fraud risk of a TPI unwittingly submitting claims that may be invalid.
47. **The ability to efficiently 'hand off' claims:** TOCs are working hard to improve the automation and speed of responses. Anything which causes manual intervention may result in unnecessary delay to

customers receiving their compensation. We would need to understand how TPIs will efficiently 'hand-off' claims with the identity and details of the customer and their journey made transparent to the TOC in case any follow up investigation is required.

48. **Consideration of Data Sharing Agreements:** Being able to notify customers for operational purposes, such as disruption to services and providing alternative travel advice, would ease customer confusion and anxiety and we would be able to reach more customers with these data sharing agreements. Additionally, this agreement would be beneficial in ensuring that claims are being paid to the correct party and any follow up required could be completed in a timely manner.
49. **The Ombudsman Scheme:** We would need to understand what protection the customer would have if TPIs were permitted to provide this service on our behalf and where liability would lay under license obligations, the Ombudsman and the law. Part of this assurance may include the ability of any claims company providing DR to become a member of the Ombudsman scheme so that the customer has the reassurance they have an avenue for redress.
50. **The Cost to the Customer:** TOCs firmly believe any cost passed on to the customer must be transparent and made known upfront as well as informing customers can make their claims directly with the TOC for free. Understanding that TPIs operate according to a business model that requires them to charge customers to use their service, we would need to understand how this would be in the best interest of the customer and not negatively affect overall claims rates.
51. **Transparency and Signposting:** Currently TPIs are not required to provide information that claims can be made directly with the TOCs for free. We would suggest that this should be highlighted on TPI landing pages so customers can make an informed decision on how their claim should be managed and made fully aware of the costs, timescales and escalation points before making their claim.
52. **The Costs Associated with Providing Delay Repay:** TOCs should not be expected to bear any new costs that would be imported into the industry to allow for TPIs to deliver DR particularly without any clear benefit for customers who already have an established, regulated, route to recover compensation which works well.
53. **Addressing the Potential Fraud Risk:** TPIs must be able to demonstrate that they would have same level of fraud enhancement in place as the TOCs and for these to be effective. This would include measures such as those outlined below:
 - We would require TPIs to ensure that claims are genuine, with the identity and details of the customer and their journey made transparent to the TOC.
 - When a fraudulent claim is identified, TPIs should agree to report to this to the BTP, log the case and take it to court.

- A process put into place to address suspicious claims or claims above an agreed maximum rate where the TOC would need sight prior to any payment being made.
 - A process agreed which any party processing a DR claim must check and record claims to reduce the fraud risk or duplicate or multiple claims.
 - Cooperation between TOCs and TPIs under the TPI Code to include detailed engagement between fraud representatives on both sides.
 - TPIs to make available their processing rules through which customer claims are run that demonstrate their claims' suitability.
54. **Managing the end-to-end DR process:** TPIs should be expected to manage the end-to-end process for customers using their service to ensure that they receive the same level of customer experience they would with TOCs. This includes handling any complaints that may arise providing this service and following the same accessibility requirements as TOCs. It is in the customer interest that TPIs follow the same requirements that are expected of the TOCs through a combination of their license and franchise obligations.
55. **Reporting and Reimbursement:** Claims would need to be reported in an approved format and a process agreed for how transactions would be paid out and settled. TPIs would not be permitted to use a refund mechanism as this would penalise TOCs not responsible for the delay. Further, the flow of compensation should be between the TOC and customer to ensure TOCs are able to follow up if they had any further questions and that the payment is going to the correct party.

Q18: What are your comments on specific substantive policy proposals with regards to the appropriate standards for TPI firms, as listed below

- **Transparency**
- **Process**
- **Evidence**
- **Data quality**
- **Payment method**
- **Data protection**

Transparency

56. In general, TOCs would request Provision 1.v to be strengthened to:
- Name them each specifically.
 - On TPI websites and apps, to provide a link to TOCs individual delay compensation claims pages.
 - make it abundantly clear that when submitting to TOCs directly the entire claims process is free of charge, not just the claim submission stage (to distinguish from TPIs who might submit free of charge on behalf of a customer but then take a charge from any resulting claim payment).
 - Inform customers that they will not facilitate fraudulent or duplicate claims.
 - If the claim results in a complaint how the process will be dealt with, including timescales.
 - inform their customers of their statutory rights against the TPI for the parts of the service that they

are responsible for providing.

- This information must be prominent to customers and not hidden under FAQ style pages or small print T&C's for example.

Process

57. It is paramount that TPIs provide customer details to be able to determine the identity of the customer, including account details, to provide assurance they are acting on behalf of the customer. We welcome the requirement in Annex C Provision 2.e that TPIs shall cooperate and submit claims in a format that facilitates these necessary checks. It would also be helpful if Annex C Provision 2,g was more specific when suggesting TPIs share "information about" duplicate claims or suspicious behavior. TOCs can manage fraud effectively when they get full visibility of these claims and would prefer the wording to require the content of any duplicate or suspicious claim be shared with the relevant TOC.
58. We agree that the additional 3 days either side of the claim should not be considered as part of the TOC's timescales. As an industry we have strived to reduce response time by improving processes and investing in automation. It is important that this additional handling time is transparent to the customer, so they do not perceive any increase in response time to be attributed to the TOC.

Evidence

59. Whilst we are mostly in agreement with the evidence section, we would like to understand how a TPI can verify that the customer has not already claimed delay compensation for a journey or ticket directly with the TOC. TOCs have robust fraud prevention processes in place to mitigate against multiple ticket claims from multiple customers using separate email or postal addresses. The same standards should apply to TPI registered claims as TOC claims.

Data quality

60. TOCs need to understand how TPIs would confirm the legitimacy of a claim and what minimum data set they would accept. In order for the proposed TPI regime to be successful for customers, TOCs suggest it would be helpful to establish a joint TOC/TPI working group to manage fraud risks and maintain a joint fraud prevention and protection policy, which would have the flexibility to meet the constantly evolving fraud risk landscape.

Payment method

61. TPIs should be PCI-DSS compliant and follow card scheme rules so compensation is not paid out from the original payment. Further, if holding payment on behalf of the customer, TPIs should be required to hold a bond to protect the customers' money. It would also be helpful if Annex C Provision 4.a could be clarified to make clear TPIs should provide all payment options available from the TOC. Otherwise it appears counterproductive to be encouraging innovative forms of payment to encourage higher claim rates if not presented to the customer.

Data Protection

62. TOCs suggest that at a minimum in a bilateral sharing scenario, each TPI and TOC would need to

conduct a Data Protection Impact Assessments (DPIA). Further, there is no mention in the TPI CoP of Payment Card Industry Data Security Standard compliance (PCIDSS), without this we cannot pay the customer directly and a transfer to a TPI cannot be to a card.

Q19: What are your views on the proposed implementation regime, including the expectation that TPIs and train companies should work cooperatively to ensure compliance with the TPI Code, and the proposed mechanism for resolving disputes.

63. TOCs propose there should be an accreditation process required to provide DR services to customers. However, expecting TPIs to make their case to TOCs and the Industry to make a call on who is a compliant is open to subjectivity and inconsistency. Accreditation by a regulator or RDG would solve this. Also, as several fraud risks have already been identified, it would be prudent to set up a Stakeholder Panel during the first year to review the process with single point of contact(s) available for any problems or issues raised.

Q20: What, if any, further measures do you consider necessary and proportionate to achieve the objectives?

64. TOCs have worked hard to establish clear lines of communication with customers and do not want to lose this relationship and the waters around responsibility and accountability to become muddled. TOCs are also keen to retain the flexibility they currently have in how they process DR claims and would not expect any agreement with TPIs to detract from this. Further, to ensure confidence in the process, TOCs have been working collaboratively with a TPI to address some of the challenges with providing DR and the same should happen with other TPIs prior to any CoP implementation.

Q21: Do you have any proposed amendments to improve the drafting and clarity of the licence condition, delay compensation code of practice, or TPI code?

65. Our specific comments have been picked up in the answers to the earlier questions.



Improving Access to Delay Compensation - consultation response from the Rail Ombudsman

Responses

Introduction

The Rail Ombudsman welcomes the initiative to improve information and engender a consistent approach for consumers who are entitled to delay repay. We note that this is an area where consumer detriment could result and more can be done to improve the provision of information and increase access to the established compensation mechanisms.

For example, the extract from our most recent statistical analysis (<https://static.railombudsman.org/roweb/wp-content/uploads/2020/06/25220621/RO-Q4-Report-FINAL.pdf>) shows that Delay Compensation is the largest driver of complaints to the Rail Ombudsman, with the provision of information also within the top 10 complaint categories.

Our response below will provide general feedback on each chapter of the consultation document, answering points where it is relevant and appropriate for us to do so.

Chapter 1

We agree that baseline considerations facilitate claims across multiple service providers. From the Rail Ombudsman's experience in handling disputes, a consistent approach means that all service providers can be held to the same standards and meaningful industry insights can be passed on in our reporting.

We believe that the draft licence condition should make reference to dispute resolution by way of the established Rail Ombudsman which will thereby be able to extend the consistency sought to the ADR landscape, and effectively incorporate this into our existing work on delay repay-related issues. Essentially a single source of redress and insight will optimise consistency in complaint handling and generate the greatest potential for data insights.

We further propose that the Rail Ombudsman should be defined as an entity throughout all of the proposed documentation, i.e. in the Licence Condition, the Code of Practice for Licence Holders and the TPI Code.

Chapter 2

The Rail Ombudsman's remit extends to the provision of information to passengers, both in general and in times of disruption and cases have been brought by passengers which highlight a lack of consistency and gaps in certain areas (as per the statistical analysis referenced above).

More guidance to service providers as to what constitutes 'best practice', in addition to the baseline conditions suggested, would be beneficial to ensure ongoing improvement and innovation in this area. The Rail Ombudsman suggests that it could be involved in the development of this guidance in order to provide feedback from cases and recommendations made in respect of the provision of information.

For example, thus far, the Rail Ombudsman has made specific recommendations regarding:

- Inconsistent customer service responses regarding automated delay repay such that the consumer lost faith in the process;
- Internal referrals to different departments, particularly where delay repay is outsourced;
- The addition of an FAQ to explain to consumers where a delay repay payment method would default to vouchers (as opposed to a BACS payment where insufficient details are provided);
- Improving clarity around delay repay claims for multi-modal tickets which as an area singled out for further development in the recent DfT consultation, needs particular and careful thought;
- Improving consistent responses where several different claims are involved.

Chapter 3

The Rail Ombudsman agrees that flexible time limits for claimants are important and that consumers must be able to make claims in multiple, accessible channels. Our scheme also has mechanisms for extending time limits on a discretionary basis where the consumer's personal circumstances are relevant. More examples could be helpful to assist rail service providers and the wording should make clear that this is non-exhaustive and all submissions will be duly considered to ensure that the time limit is not unfairly applied when the consumer was unable to submit their claim within the prescribed limits. This is currently not made clear in the draft Code of Practice for Licence Holders.

The Rail Ombudsman has also considered the information requirements that are available to enable the consumer to submit a claim successfully first time. Whilst we note general references to 'the information the passenger will need', we consider a checklist will give more guidance and certainly for consumers. For example:

"Before you submit a claim, you will need to provide:

- Ticket or proof of purchase;
- etc."

This will also ensure a consistent approach from train operating companies and TPIs.

Chapter 4

The Rail Ombudsman has no specific input into this Chapter.

Chapter 5

We welcome that TPIs will be mandated to join the Rail Ombudsman which will ensure consistent case handling outcomes and reporting which mirror those already in place for current members. Membership of the Rail Ombudsman will ensure a consistent approach across service providers, with binding resolutions which consumers and other service providers alike can rely upon. The Rail Ombudsman operates a single front door to the rail industry, and it is important that this function is not compromised when considering consumer access to dispute resolution. Defining the Rail Ombudsman as a specific entity will also guard against the prospect of duality of ADR schemes which would be undesirable and be the cause of significant consumer confusion with the potential for an inconsistent approach to case handling leading to conflicting outcomes and undermining the single-front door function of the Rail Ombudsman

Conclusion

The Rail Ombudsman believes that liaison will be required at the earliest stage to ensure that the information regarding signposting passengers to our scheme, the remit and processes are clear and consistent. The Rail Ombudsman also believes that it would add value to the Steering Committee, enabling insights to be shared on an ongoing basis.

Please do not hesitate to contact us if you require amplification on any of the above points.



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1. Executive Summary

- 1.1. We note that RDG have also submitted a response on behalf of the industry. In the event of conflict between this document and the RDG response this document and its attachments should be taken as Southeastern's position.
- 1.2. The scope of the consultation is ambitious. Southeastern (SE) supports many of the aims of the consultation and believes that in order to achieve those aims the constituent elements which are being consulted upon must be addressed in a phased manner and be transparent as to cost and legal accountability.
- 1.3. Whilst clarity is required as to how the steps proposed would interact with existing requirements in this area, improving delay repay ("**DR**") awareness, processes and innovation are principles which SE supports. Our view however is that these principles are best achieved by way of an intra-industry code of practice that specifically relates to codifying and standardising current metrics and activities and driving awareness to benefit customers. The inclusion of introducing TPIs and a claims portal should sit separate from the industry CoP and be considered as distinct and unconnected entities.
- 1.4. The consultation conflates two different types of third parties, TPI¹s and TPR²s. TPIs are already "in" the DR "marketplace", TPR's are not and may represent a step change in how TOCs interact with their customers by removing the direct link between the TOC and its customers. The industry is at a unique and potentially precarious point in its evolution. Passenger numbers are low and trust must be regained to increase those numbers. Fracturing the direct relationship between TOCs and their customers is not in the customer or TOCs best interests and is not a proposal that SE can support.
- 1.5. SEs position is that the proposed centralised claims portal (a "**CP**") is insufficiently described, costed or risk assessed to support at this stage. If the CP were to come into being it should not be mandated for TOCs which already have automated DR systems and should be self-financing in terms of set up and running costs by way of a proportionate, but not prohibitive, levy on those who use it. Given current funding arrangements across the industry it is incumbent on all operators to act responsibly when incurring costs.
- 1.6. TPIs who wish to process claims or handle customer money should be subject to independent third-party scrutiny to ensure financial stability and rigorous governance and processes must be in place to protect customer money and to prevent/minimise fraudulent claims.
- 1.7. If the licence conditions were to be progressed, then industry contractual and regulatory arrangements must be amended to reflect that the TPI is the appointed agent of the customer to whom (properly constituted) DR claims are to be paid. Consequently, it must be transparent to customers that their rights are against the TPI (and not the TOC) if such payments are not received³.

¹ Third Party Intermediaries - commonly TPIs use their own user interface to submit claims on behalf of customers and are commonly "invisible" to [SE/GTR]. The claim is processed by the TOC. Once a claim is received the TOC deals directly with the customer.

² Third Party Retailers – are ticket retailers who also wish to add DR payment to their customer offering. It is currently unclear, other than at a conceptual level, as to how this is to be achieved.

³ This will require changes to NRCOTs, Passenger Charter documents, Franchise Agreements and Licence conditions.

2. Scope of Consultation

2.1. Three distinct issues are dealt with in the consultation:

2.1.1. Improving the “customer experience” of DR by increasing awareness, and the ease with which claims can be made and innovation in this area. The interaction of these proposals with existing obligations is not clear however SE supports all steps designed to improve the passenger experience around understanding and claiming DR. However, a licence condition is not the appropriate vehicle to achieve these aims. Instead we would propose an industry developed CoP on these matters which the ORR measures TOCs against.

2.1.2. Codifying the obligations owed between TPIs and TOCs. In this respect we believe TPIs and TPRs are incorrectly combined as having a single common interest. TPIs and TPRs are likely to have differing interests and may view the potential rewards of participating in the “TPI CoP” quite differently. TPIs who are not ticket retailers may favour a simplified approach to the one proposed. It is SE’s view that the integration of both TPI’s and TPR’s into the DR landscape could be managed by having them:

2.1.2.1. Fully comply with the standards set out in the “intra industry” CoP proposed in 2.1.1; and

2.1.2.2. demonstrate financial stability and rigorous governance and processes to standards assessed by the ORR / an independent third party where they are handling customer money or processing claims.

2.1.3. A centralised claims portal (a “CP”). Paragraph 7 below sets out [SE/GTR’s] response in respect of the CP.

2.2. Whilst there is a degree of overlap there is also a lack of commonality in these issues and thus SE believes that they would be better delivered in the manner set out in 2.1.

3. TPIs, Customer Experience, Trust and Relationships

3.1. SE is a customer focused organisation. We strive to achieve the highest level of operational performance possible and, on the occasions that we fall short of that standard (whether or not through our own fault), it is important that we are able to regain the trust of our customers by clearly explaining the reasons why we have failed and compensating the customer appropriately. This may, at times of considerable disruption, include the provision of enhanced compensation. Inserting a TPI into this type of situation fractures the relationship and the ability of TOCs to calibrate its response to customers in an agile manner when severe disruption occurs. Breaking the direct relationship between the customer and the TOC may also give rise to a decrease in the levels of trust and satisfaction that customers have in TOCs / the industry, for example because TOCs will be left to deal complaints without the ability to compensate (as it has been paid by a TPI). Furthermore, customers using a TPI may be placed at a financial disadvantage and receive less compensation under such circumstances.

3.2. Gaining and maintaining customer trust is always important, but particularly in the present post lockdown environment, where passenger numbers are significantly lower than pre lockdown levels. Any interventions which erode trust must be managed carefully. It is therefore a prerequisite for any TPI seeking to fully participate in the DR claims process that they must be accountable, stable, transparent and trustworthy, in short this means that:

- 3.2.1. TPI terms and conditions with their subscribers must be transparent as to all aspects of their relationship (particularly the use of subscriber personal data), and ensure subscribers know the cost to the subscriber of claiming DR via the TPI rather than using TOC systems and that using a TPI to make a claim means that the responsibility to pay that claim is with the TPI (not the TOC);
- 3.2.2. Industry documents, such as the NRCOTs (National Rail Conditions Of Travel), Passenger Charters, Codes of Practice must make it clear that the responsibility to pay DR is the TPIs when a claim is submitted via a TPI. TPIs are not an agent of the TOCs, and the NRCOTs and industry documents should be transparent on that point;
- 3.2.3. TPIs will be handling money (which may well be public money), and as such appropriate security (e.g. bonds, guarantees, or letters of credit) should be in place to protect customers and the industry against any failure to reach its rightful recipient. Such security should also extend to holding TOCs harmless if TPI mismanagement results in claims against TOCs (e.g. due to TPI mishandling customer personal data) and
- 3.2.4. If a CP is implemented TPIs should be required to adhere to prove (to an independent third party) adherence to robust information security standards to ensure the safety of customer data and to ensure that TOC IT systems will not be compromised. It is further queried how TPIs would use a CP in the event a CP is introduced.

4. Single Industry Approach and Achievement of ORR Aims

- 4.1. SE fully supports the ORR's position to increase awareness of DR, the ease with which DR can be claimed and the need for innovation in the sector. As our answer[s] to question[s] in the consultation demonstrate, we believe that as a result of the combination of years of expertise in handling some of the largest volumes of DR claims in the industry coupled with considerable investment in IT systems, we are at the forefront of the industry in these areas.
- 4.2. TPIs have been a part of the compensation landscape for many years. As Transport Focus research demonstrates they have not been responsible for any noticeable uplift or change in compensation awareness to customers within that time.
- 4.3. As the ORR's "Consultation on improving access to delay compensation" dated 30/6/20 (the "Consultation Document") notes "different delay compensation arrangements apply across the train operators". SE have some of the most accessible, easy to use DR claims channels in the industry [and as such our position is that a licence obligation to accept TPI claims is not in the best interests of our customers, who already benefit, or are able to benefit from some of the most expeditious and reliable DR claims channels in the industry. To compel SE to accept TPI claims when an efficient and cost-free alternative exists is inequitable

5. Cost and use of public money

- 5.1. At present the majority of TPIs do little more than encourage customers to use their user interface as a route to submit a claim on our automated system, and this comes at a cost to the customer. In addition, due to the submission of fraudulent claims made via TPIs many TOCs must administer these claims and reject them at some considerable cost. The involvement of TPIs increases cost burdens on TOCs without adding value for the customer

or TOC. For TPIs who maintain this model of operation thought should be given as to how TPIs make a proportionate contribution to the cost they generate within TOCs.

5.2. Establishment of a CP. New IT systems, processes and procedures, and the ongoing provision, support and maintenance of the same will mean costs for the industry. Whilst TOCs are party to EMAs these costs are taken direct from public funds. Careful consideration should be given to how any set up and operational costs that are incurred in a manner which is consistent with Government guidance on managing public money and the TOCs obligation to act as responsible operators. Thought should be given as to whether TPIs are required to pay a percentage levy on a per claim basis which could go to ensuring that the industry is “cost neutral” with regards to set up costs over a 3/5 year timescale, and that TPIs bear their share of the ongoing provision, support and maintenance costs.

5.3. In addition, the question of cost goes beyond the matters referred to above.

5.3.1. As the TPI method of working is not uniform or proscribed it is difficult to provide a comprehensive response to ORR on what costs might be incurred. For example, a TPI that stays out of a CP may request links into TOC back office systems to extract data needed to verify claims, this would give rise to system development costs for the TOC and Information Security issues. These costs will need to be allocated appropriately. Where a CP is to be set up the cost picture becomes even more complex.

5.3.2. TOCs like SE who have invested heavily in automated systems may be left with stranded costs and/or an additional cost burden to adapt those systems to any new industry system. This results in a perverse situation whereby those who have led the industry in automation and serving customer needs will be penalised with a cost burden for doing so. This is inequitable and discourages TOC investment and innovation.

5.3.3. TOCs with automated systems may have outsourced suppliers of these services, if TOCs are compelled to participate in an industry “back office” then there may be increased costs or termination costs (including, potentially, redundancy/TUPE costs) involved in extracting itself from those contracts.

5.3.4. TOCs should not be expected to bear the cost of lack of TPI governance or poor practices. TPIs need to be of sufficient financial standing to give reliable financial protection (such as indemnities) to the TOCs should TPIs fail to pay monies on to customers or be responsible for TOCs suffering losses due to TPI act or omission.

6. Disputes, TPI scrutiny and TOC regulatory compliance.

6.1. Para 140 of the consultation summarises how TOCs who have concerns as to a TPIs compliance with the CoP are to address those concerns.

6.2. The onus is on TOCs to identify and segregate CoP compliant TPIs from non-compliant TPIs. It is not clear how this will be possible. In addition, once TOCs suspect a TPI of being non-compliant the TOC is expected to continue to deal with and process the claims of the TPI until such time as the dispute is resolved. In the case of a bad actor / inefficiently professional TPI the obligation to continue to cooperate during this period leaves customers and the TOCs exposed to the risk of paying money to an organisation which should not be receiving it.

6.3. In terms of compliance at a “claim” level the burden again falls to TOCs. This is technically challenging when processing is designed to be automated (to more easily meet handling times and promote the efficiency ORR seeks) and presents possible expensive IT system

development work. If the CoP is to work, then it is recommended ORR introduces measures to ensure only compliant organisations can enter the market and compliance is not optional.

- 6.4. To remove these concerns clear standards in addition to the CoP to which TPIs must adhere in respect of claims and governance are to be established and TPIs must be audited against them not less than annually, the cost of which would be either paid by the TPI upfront or via a levy on a per claim basis.
- 6.5. TOCs should not bear the regulatory risk where they are unable to adhere to Licence / Franchise requirements where DR is not paid to customer by a TPI (having received the same from the TOC), or TOCs are unable to pay valid customer DR claims due to TPI intervention. The Licence and Franchise Agreements will need to be amended to address this issue.
- 6.6. Fraud: generalised CoP commitments to prevent fraud on behalf of the TPI are insufficient, TOC knowledge should be used to establish a minimum set of requirements to which a TPI must adhere as part of an annual audit (see 6.4 above).
- 6.7. Where TPI's fail to spot fraudulent claims, they should bear the cost.

7. Centralised Claims Portal

- 7.1. The CP (referred to at para 91 of the Consultation) is only a high-level concept at present. Establishing, transitioning to, maintaining and operating any such system is likely to be very costly. It would therefore need to be fully scoped and subject to a full business / investment case, in addition to any analysis requirements which may flow from the current funding arrangements in place in the industry.
- 7.2. SE contend that if there is to be a CP it should not be a licence condition to have to participate for those TOCs who already offer automated DR.
- 7.3. A CP would bring information security, data protection risks and potentially competition law risks which would have to be robustly managed but cannot be subject to any analysis until the proposed scope and operating model of such a CP is known.
- 7.4. Having a CP would penalise TOCs who have invested heavily in their systems and reduce standards to the lowest level, stifling agile innovation which TOCs such as this one can and do deliver.

Tracsis' Response to the Consultation on improving access to delay compensation

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Executive summary

The following paper details Tracsis' response to the Consultation on improving access to delay compensation, the Proposals for a Licence Condition, Delay Compensation Code of Practice, and Third-Party Intermediaries Code of Conduct.

We have contributed to the original Market Review, round table discussions and now document our comments on the proposals as set out. To ensure our most comprehensive contribution we have taken excerpts from the original Consultation documentation using the defined references and provided our comments inline (tabled green) where we felt appropriate and then referenced our comments when responding to the Consultation questions.

Tracsis' comments are made on behalf of Tracsis Travel Compensation Services (TTCS) and iBlocks smartREPAY who are both industry leaders in the provision of delay compensation system solutions with a combined customer base underpinning 73% of compensation claims received during the 2019/20 Railway Year. Within the context of uninterrupted year on year increase in claim volumes, our solutions aim to continuously improve the end-to-end delay repay experience by increasing the availability of automatic delay repay, decreasing claim response times and highlighting claim anomalies to the TOC (such as fraud and volume submissions) while also simplifying the customer's claiming experience.

As an example of simplifying the traditional reactive claim process, SWR moved to smartREPAY in late March 2019 and since then the claim website asks for a third less information previously requested and processes claim response times in a quarter of the time - even with all our systems checks and measures in place.

As an example of increasing automatic delay repay, we have established the proactive approach where the TOC automatically notifies the passenger or pays back their compensation due through the one-click and zero-click methodologies for both traditional reserved point-to-point tickets and integrated into our Account Based Ticketing solution.

We have supported the industry to meet SLAs through innovation, integration and validation and having succeeded regularly achieving automation levels of +70%. We are continually working with our customer base, key stake holders and interested parties to further refine the processes through continuous improvement techniques with a firm focus on the passenger's experience while protecting all parties from potentially fraudulent activities.

The Proposal (in summary)

6. A licence condition on delay compensation which will require passenger train companies to comply with a Delay Compensation Code of Practice (CoP) – a common baseline and set clear requirements in several areas

- Awareness – baseline expectations for how and when train companies should provide information on delay compensation to passengers, as well as the nature of the information
 - General Provision – online and throughout the booking/journey
 - During Disruption
- Ease of Process – submission should be as easy as possible. Information and evidence requirements should be clear and proportionate. Baseline expectations for the way the process for delay compensation to work, objective being simpler and quicker.
 - Appropriate timescales for processing a claim
 - Information requirements are necessary and proportionate
- Train operating companies need to continually improve and innovate. They need to monitor their own performance. Sharing of experience where new initiative tried. Clear, consistent, regular publication of performance data.
- TPIs accepted if they meet the TPI Code of Conduct.

Background (in summary)

Current Compensation Arrangements

13. Delay compensation arrangements are designed and mandated by the Government; different arrangements exist however these are increasingly coming into line.

14. DR15 and DR30 are the two most common although there are a few that still use passenger charter schemes.

ORR Role

15. Delay compensation arrangements are not currently set out in or subject to ORR's licensing regime. ORR is a specified regulator able to receive a super-complaint for the purpose of the Enterprise Act 2002 and in December 2015 a super-complaint from Which was received.

Recommendations:

- 5 standards identified as good practice
- Updated guidance on meeting the passenger information licence condition to recognise the importance of giving passengers good information about compensation in the event of a delay.

17. 2017 RDG developed and published on the NRE website it's compensation best practice guide. Also convened a cross-industry forum to share knowledge and develop common criteria for minimum standards, best practice and future aspirations.

18. February 2019 the Williams Review asked ORR to advise on what more could be done by train operating companies to make it easier for customers to access the compensation they are entitled to, and whether more regulatory powers are required to ensure it happens.

19. In 2016 only 35% of eligible passengers claimed – no change in 2018

20. Factors hampering passengers' access to delay compensation?

- Passengers are unaware of entitlement
- And when aware too onerous to claim v amount received

1. Delay Compensation Licence Condition (in summary)

34. In this chapter, we set out the case for introducing a licence condition on delay compensation. We draw upon the evidence of consumer detriment and concern, and the benefits available to passengers and train companies which could be derived from the licence condition.

Measures introduced following super-complaint have not had the desired effect i.e.

- In 2018 only 35% of eligible passengers claim (no change since 2016)
- Evidence passengers remain unaware of entitlement and therefore do not claim.
- And when aware there is a view that the process is too onerous to claim v amount received.

40. A significant barrier to increasing the number of claims for delay compensation is the relative low awareness amongst passengers that they are eligible for compensation, and how to go about claiming it.

Comment 1: Raising Awareness

- As part of the booking process, ideally via an App, passengers could receive PUSH notifications relating to their booked journey. These could be configured to provide relevant travel information based on the scheduled times and provide prompts to aid the passenger's travel plans.
- At the point that the intended journey commences the App can ask the passenger to 'check in' confirming they are on-board their intended train.
The App could then monitor the journey and upon arrival at the destination either a) confirm arrival on time b) confirm arrival x minutes delayed (but below the threshold for delay compensation) or c) confirm arrival x minutes late, advise eligibility for delay compensation and either a) signpost the passenger via a link/button to the delay compensation web form or submit the claim for the passenger using the details contained within the App 'My Account' subject to having all the relevant information at the point of submission.
- Role of the DfT:
 - To prevent confusion around when a claim can and cannot be made depending on which ticket or Train Operator is used, the DfT should mandate that all operators use the same DR Rules e.g. switching away from Passenger Charter and moving to DR15 across the board

- Ticket retailers - should provide clear messaging at the point of sale, notifying the customer:
 - That compensation is due if the train is delayed
 - How the customer can claim in the event of a delay (including website link)
 - Encourage the use of a smart ticket equivalent where available as these will often include Automatic Delay Repay
- Role of the Train Operating Companies:
 - In addition to the static onboard and at station Delay Repay summary announcements, these should be supplemented with automated Station and On Train announcements for Delay Repay if a train arrives 15 minutes or more late against the station scheduled arrival time

46. Another barrier to increasing the number of claims is the processes supporting delay compensation, which passengers have to navigate and engage with as part of doing so.

47. One reason for this is the complexity of the claim process itself. More than 1 in 4 passengers who choose not to claim delay compensation give the reasons for not doing as it would take too much time or the process is too complicated. Another survey suggests that nearly a third of passengers consider it is too much effort to claim.

48. This perception that the claims process is onerous is supported by evidence that suggests that some train companies require up to 24 information fields to be completed in order for an online claim to be processed. The number of separate pieces of information required, and inconsistency in the type of information sought by train companies, creates a barrier to claiming delay compensation

49. The complexity of the claims processes can also lead to errors being made by passengers when completing delay compensation claims forms. This can lead to these claims being rejected by the train company

Comment 2: Improving Process

One of the main reasons for requesting more information as part of the submission process is that allows applications to automatically validate the data entered resulting in a very fast response to the customer to confirm that their claim has been approved (or not), and that their entitled compensation is on route by their chosen method of fulfilment or advising the passenger why it has not been able to approve their claim and any resulting next steps. Reducing fields therefore could potentially have a negative impact resulting with an increase in manual referrals and look ups performed by agents increasing delays responding to the passenger. It is therefore important to assess the impact of field removal on the automation process which directly influences the achievement of SLAs.

The above aside, there are a number of ways that the submission process could be simplified and also expedited, and these vary depending of the type of ticket and the frequency of travel.

1. A secure 'My Account' areas could be established for passengers to store specified and required static data which can be used to populate specific fields within the submission process i.e. name, address, preferred method of compensation, ticket details, nominated journeys enabling the passenger the minimal number of input when they need to submit a claim i.e. date and time of delay / cancellation. This information would be input once (unless changes are made over time) and directly reduces the amount of information required in the submission of subsequent claims.
2. Implementing 'One Click' and or 'Zero Click' claim processing concepts where the passenger has very little involvement in the submission process other than to confirm they were impacted by the delayed/cancelled service and select the method of compensation or no involvement where the nominated compensation method may be used from a 'My Account' profile.

Both of the above use securely stored data which necessitate the passenger completing an online form initially and maintaining should the details contained within change.

With regards the complexity of the forms, and subsequent errors in submission leading to rejections this could be mitigated by better signposting and front-end validation, guiding the passenger through the process clearly. Rather than a rejection it would be better to engage with the passenger if errors do pass through to the decision engines to alert and advise what information is missing/erroneous with an interactive portal for the passengers to update accordingly. There are valid rejection reasons and not all claims are rejected due to errors in submission.

The Role of TPIs

52. Third Party Intermediary firms (TPIs) provide a service to passengers by facilitating claims for rail delay compensation, assisting and sometime processing passengers' claims, often in exchange for a commission or subscription fee.

Comment 3: We do not believe the commission model is an appropriate charging method as the effort required and deployed to facilitate the submission of a passengers' claim neither increases nor decreases depending on the value of the ticket or the length of delay. The submission process is the same with a ticket value of £5.00 or £250.00 and so the price of the service should not be derived from a compensation awarded. 100% of the compensation entitlement is due to the passenger and this should not be diluted to pay for the service provided by the TPI.

Both a fixed price subscription fee, either time-based or fixed price per claim, offers a more open, upfront and proportionate to costs model. Having different subscription pricing tiers offering varying levels of user experience and time saving features allows the end user to select the appropriate subscription level that they deem getting their time back is worth to them. Having different pricing tiers also allows for TPI innovation in terms of user experience and improving the overall claiming process and provides consumer choice.

53/54. TPIs have the potential to bring innovation into the delay repay market, placing competitive pressure on licence holders to improve their own 'in-house' offerings and so have the potential to play a positive and important role in bringing innovative and consumer friendly services to the market by engaging passengers, raising awareness and assisting individuals to make claims.

However, there are risks, and some evidence of behaviour and conduct among some existing TPI companies that is harmful to both customers and train operating companies i.e. lack of transparency about fees and inadequate protections against duplicate or fraudulent claims. Licence holders are wary of TPI involvement in the market and have in some instances cited these factors as justification for refusing claims submitted.

Comment 4: It is noted and agreed that there are both benefits and risks but we believe collaboration is the most appropriate way to navigate through and achieve the best result for passengers wishing to utilise the services of TPIs while protecting against fraudulent and duplicate claims.

Duplicates: It is our opinion that although the TPI has the duty to prevent fraud/duplicate claims submitted via themselves, a TPI will never be able to assess whether a claim it is asked to submit on behalf of a passenger has already been received by the train operating company unless there is a step change in attitude and a collaborative approach to the solution.

Solution: There needs to be a process that can look up and or/match claims upon submission to see if a duplicate already exists. The Tracsis proposal which has been shared with RDG, Transport Focus, ORR and DfT is to supply a service extension to NRE which is a single-entry point, consistent and streamlined claim submission portal that passengers and approved TPIs can submit claims via. This single submission portal would have the minimum agreed fields required to submit a claim and would be clearly signposted and very easy to navigate for passengers and would have appropriate industry standard APIs for TPIs and train operating companies alike. Field and data validation would prevent errors in submission leading to unnecessary rejections and a 'My Account' feature would facilitate the secure storage of data, ticket information, nominated journeys etc to minimise the input further. The 'My Account' would enable passengers to update any information directly allowing the claim to be reconsidered for submission in the event that there were errors in the initial data provision. The TPI could submit claims to this portal also and subject to configuration rules may or may not be applied depending on the outcome of this review and requirements gathering.

All claims **could** then be validated in the Tracsis central, fraud application where the most rudimentary check, the 'duplicate claim rule' would pass or fail. Additional rules can be configured by train operating companies' requirements to enable further fraud checks which could supplement the train operating companies own inhouse CRM/Claim management processes with a confidence score based on the outcome of the fraud rule set. Once the process completes the claim(s) would be submitted to the relevant train operating company for approval/rejection, communication with the passenger and fulfilment of compensation. The benefit of this approach is four-fold.

Passenger: There is one place to submit a claim for delay compensation. The form is clear, simple and where the passenger has purchased tickets from NRE these could be displayed within the 'My Account' area. It is a standard form, clear signposting and interactive should validation fail with clear instructions on how the passenger can remedy the issue. The passenger has one single, simple form and does not even need to know which train operator managed the train they were on.

Train Operating Companies: Adopting the NRE service extension would remove the need to host and maintain a branded submission form but continue to offer a differentiated service through the use of their claim managements systems/CRM. The claim submitted via API would have been validated against a number of Industry Data Sets (LENNON, DARWIN, GoldStar to name but a few) which would improve the quality of the data being passed through to train operating companies allowing them to improve their automation rates and thus meet their as is SLAs or the intended shorter SLAs. The duplicate claim check (with data sharing agreements) could be expanded to cross train operating companies claim checking which also identifies potential fraudulent submissions using the same claim data submitted to multiple train operating companies.

Where a train operating company wants to incentivise a passenger (for example Compensation Options) these variations could be accommodated in the single passenger submission form to ensure no loss of innovation. The relationship between the train operating companies and the passenger would remain intact, with the train operating company retaining the ability to know and incentive the passenger, attract and build loyalty as all communication would still directly flow between the train operating company and the passenger. Enhanced security could be added to the 'My Account' set up process such as integration with CIFAS, National Hunter, Experian etc to further mitigate fraudulent attempts to submit claims.

Financially the train operating companies would retain the final approve/rejection decision of the claim and so would be able to control, monitor and report on this in any internal or external reporting requirements. Tracsis would provide a reporting dashboard to facilitate the reporting requirements within the claim submission process, with standard and bespoke reporting capabilities to deliver key information in a format that could be ingested into an existing reporting application or used standalone

Accepting claim submissions via the NRE extension service would facilitate monitoring of TPI submissions, by volume and other quantitative measures, recording whether a TPI was approved and provide an audit trail for future reference. A very simple process to prevent unauthorised TPIs or those that are no longer authorised would be standard.

Regulatory Bodies: One simple standardised form, clear and easy to navigate for the passengers use with built in validation, extensive configurable fraud detection and prevention capabilities which maintains the relationship between the train operating companies and the passenger and enables better, more accessible reporting and Management Information.

Standardised reporting across the Industry and by train operating companies would be easy to access once the reports had been specified and industry wide fraud statistics could be deployed, used to raise awareness, combat fraud, protect revenue and protect the fee paying passengers who want to use and enjoy the railway.

Third Party Intermediaries: One standard API submission process with capabilities of accepting bulk claim submission with built in duplicate and fraud prevention and detection capabilities. While this report considers a potential payment to the passenger by the TPI Tracsis believe that this undermines the relationship between the train operating companies and the passenger and therefore would prefer the fulfilment be carried out by the train operating companies and any remedies offered emanate from that operator. The alternative approach could lead to significant reconciliation issues and disputes over payments in addition to undermining the relationship between the operator and passenger. NB: Should the requirements be determined to allow TPis to facilitate the payment the API submission process will be capable of bespoke enhancements to facilitate this.

Proposal for a delay compensation licence condition Annex A

56. It is set out and considered to be in the public interest to introduce a licence condition on delay compensation.

57. ORR has licence responsibilities for complaint handling, assisted travel and passenger information and so this would be in line with the approach in those areas.

58. A CoP will be established with baseline standards which train operating companies will seek to meet and exceed, a set of obligations that against which compliance will be monitored and a clear route for regulatory action where these are not met by a train operating company.

59. There is no reason to have a differing approach for train operating companies under government contract, open access or concession operators.

Consultation Questions

Q1. Is there any evidence that we have not considered which may be relevant to this chapter?

Q1 Answer:

The chapter does not reference the trend/change results of the 20-day claim closure rates for each Train Operator over time – the capturing of more structured data points on the customers claim form achieves greater claim automation rates for the Operator and therefore speedier and more accurate resolution first time to the customer.

The chapter does not evidence the acknowledged level of, or risk of, fraud within the current Delay Repay model. There are multiple facets of claim fraud from fake tickets being claimed for compensation, the passenger with a flexible time of day ticket (i.e. season ticket) did not travel or intend to travel on the claimed for perturbed train, or the passenger submits claim across multiple Train Operator's trains that operate on their journey which their travel ticket is valid for and all of these types are exposed by the current lack of a centralised overarching integrated data repository directly designed to detect and stop these fraudulent compensation claims from being paid out.

The chapter's evidence does not refer to changing demand and use of ticket types, where there is a move away from paper-based tickets and over to more e-tickets, such as mobile tickets or emailed PDF based tickets, with QR code scanning capability. This positive uptake ticket type trend provides opportunities for more accurate information regarding a passenger's actual travel movement, especially important for passengers travelling on time flexible tickets such as Open and Season tickets. The innovation for process improvements, along with stopping fraudulent claims which is exacerbated across a rail network where multiple operators are able to transport the same passenger and blinkered by only having visibility of their Delay Repay claims, requires better accessibility to this network ticket usage data to fully realise the customer experience potential. Step change innovation has always centred around knowing with confidence when a passenger has travelled in order to push Delay Repay claim notifications all eligible customers and flip the traditional process on its head.

The chapter's evidence does not acknowledge the data limitations being imposed by TfL's Oyster system. Oyster is a popular form of travel in and around London's zonal system. Currently, TfL will not make available ticket/ journey information in a digital form which increases the manual elements of Delay Repay on Oyster by:

- requiring the customer to enter extra information when raising a claim
- decreasing the speed at which claims can be processed because evidence must be manually reviewed
- preventing the ability to raise Automatic Delay Repay claims on behalf of the customer which would otherwise be possible given the journey and ticket information for a customer's Oyster travel

The chapter's evidence does not refer to Travel Management Companies (TMC's). Have TMC's contributed to the consultation process, and their role within the end to end process of purchasing tickets, facilitating travel, information provision and the financial compensation end point? Some TMC's see their role as facilitating the corporates that have purchased the ticket and so believe there is a case that the compensation ought to go to the corporate rather than the passenger impacted by the delayed or cancelled train while others see their role firmly as information providers and as such this is significant resource that could be utilised to support the objectives of this review.

Q2. Should open access and concession operators (as well as franchise29 holders) be subject to the proposed licence condition? Should it apply to other holders of a passenger SNRP30?

Q2 Answer: Yes, it is our view that a new, mandatory license condition should be inserted within the Statement of National Regulatory Provisions (SNRP): Passenger granted to any train operating company wishing to operate passenger rail services, whether on a franchised basis or open access, or indeed any other future access arrangement.

We believe that rail passengers require consistency from the railway industry when they wish to exercise their contractual and lawful consumer rights when claiming compensation following disruption. It is already, arguably, complicated enough that Open Access Operators, (and some others non-standard Operator arrangements), like Merseyrail, London Overground and MTR Elizabeth Line), have differing compensation arrangements than the more common, and standardised "Delay Repay" scheme mandated in more recent franchise obligations. For Open Access Operators to be able to "opt out" of this proposed third party framework, in our view, erodes the consistency of the claim process, and potentially could lead to Open Access Operators handling far less claims for compensation than an equivalent franchised operator would receive. This would be ultimately to the detriment of the passenger, and would in our view, potentially provide an unfair commercial, financial advantage to the Open Access Operator.

We would support a license condition being attached to Open Access Operators to mandate participation in these arrangements.

Q3. Do you have any comments on our initial draft of the delay compensation licence condition (in Annex A)?

Q3 Answer: Tracsis supports the proposed inclusion of Condition 13 within SNRP and described within Annexe A, save for subsection (1) and (2), where we would prefer the wording to be slightly amended.

The below revised wording is in keeping with the documentation content where exceeding a set baseline is the desired objective.

“(1). The SNRP holder shall not only comply with, but also to seek to exceed, a Delay Compensation code of practice published by ORR.”

We feel the below revised wording ensures the purpose of the license condition is better able to reflect that this condition is ultimately to ensure that the SNRP's passenger is able to exercise their right to claim for compensation through a wider range of methods, rather than simply providing the TPI with a framework to do so.

“(2). The SNRP holder must accept and process claims for Delay Compensation received from Third Party Intermediaries, on behalf of the SNRP holder's passenger(s), who meet the requirements of the code of conduct published by ORR for Third Party Intermediaries.”

2. Increasing Passenger Awareness

Summary

63. In this chapter, we set out the case for making improvements to ensure that passengers are aware of their rights to delay compensation. We also set out the draft proposals in the CoP designed to achieve those improvements.

Introduction

64. Having established in chapter one the strong case for introducing a licence condition requiring adherence to a CoP on delay compensation, we now set out the content of the CoP designed to increase passenger awareness.

65. We are aware that there is a role in raising awareness for other industry parties beyond that envisaged for train companies in the CoP. We recommended in our response to the Williams Review that as the statutory sectoral consumer body Transport Focus be funded to further promote delay compensation to passengers via a national campaign. Its subsequent Make Delay Pay campaign across a range of social media has been running across a variety of media.

Proposals for increasing awareness

66. The purpose of this section of the CoP is to establish clear baseline expectations for how and when train companies should provide information on delay compensation to passengers as well as the nature of that information. We focus here on two principal areas:

- general provision of information (including online and throughout the course of a passenger's booking and journey);
- and information during disruption – when research shows the importance of awareness is most acute.

General provision of information

67. The CoP articulates a basic expectation of train companies: that they must ensure that information on delay compensation is clearly accessible to passengers, and prospective passengers, in the course of their booking and journey. In so doing, this provides an opportunity to increase awareness amongst passengers not only when

they actually want to claim delay compensation but also more generally about the existence of these arrangements.

Online

69. We propose that train companies provide a dedicated webpage with all relevant information on delay compensation. Providing information and/or a prominent link to a delay compensation page on the homepage of the train company's website will ensure that passengers are readily able to access relevant information. In so doing, we expect train companies to provide clarity in different compensation arrangements: delay compensation; ticket refunds; and claims under the Consumer Rights Act 2015.

70. Research conducted by Transport Focus shows that most train companies now have a prominent link on their website homepage for delay compensation information. Therefore, we do not consider that enshrining this baseline within the CoP will be a burden on train companies, and will bring those companies who do not currently provide this information prominently up to the same standard. We would expect a link to this information to be provided as part of the purchasing process via notification of e-ticket bookings, and for train companies to refer to this information in social media communications.

Stations

71. Passengers must be able to get information on delay compensation at the station..... Therefore, we propose that train companies make appropriate use of different media including for example posters, information screens, leaflets etc. at stations to provide information about their delay compensation arrangements. We do not specify exactly what method should be used to provide information – train companies are best placed to determine that based on the size, facilities and staffing levels at stations. For example, we would not expect leaflets to be provided at unstaffed stations, but we would expect other means such as posters to be used instead.

On board

72. In common with expectations of the means of providing information at stations, passengers must be able to get information on delay compensation whilst they are on the train. Train companies already make use of the space, materials and technology at their disposal to provide passengers with promotional and operational information whilst on board. We propose that companies make appropriate use of these same means, including posters, vinyls, information screens and announcements, to provide passengers with information on delay compensation. We are aware that some already do this.

Comment 5: Depending on the capabilities of the station/on-board announcement systems a suitable timed message could be orchestrated based on the real-time running information to make automated announcements pertaining to delay compensation eligibility.

Announcements could be automated and the delay minutes (if delayed) announced at each station providing passengers with essential information at the time they arrive at their destination. Alternatively, this could be via a PUSH notification to the on-board staff to prompt the inclusion of a delay compensation entitlement message as part of the station arrival message.

In person

73. We propose that, with certain qualifications, rail staff should be able to provide passengers with relevant information about their entitlement to delay compensation. Research shows that one in four passengers become aware of their eligibility to delay compensation via information from rail staff either directly or through announcements. It is reasonable for passengers to expect customer-facing staff to be able to provide accurate information on delay compensation. This includes staff who work in stations, on board trains, and in call centres including those who respond to contacts via station help points. However, our mystery shopping exercise showed that only 34% of passenger / staff enquiries yielded an accurate response in all four key areas (delay thresholds, compensation levels, payment methods and process).

74. We recognise that in certain situations providing this may be more difficult, for example train dispatch staff at busy stations. In these circumstances, the member of staff should be able to redirect the passenger to an individual who will be able to provide the required information or, where that person is not available to provide precise details, of where the information can be accessed. Staff must be able to respond to passenger queries about delay compensation. As noted above, we have tested the ability of staff to respond to passenger queries about delay compensation previously and may do so in future to monitor performance in this area.

Comment 6: Frontline staff should be empowered with mobile based software solutions that include access to real time arrival and departure boards in addition to onward journey planning using OJP from NRE to provide a much-improved customer experience at such time rail staff have the time to safely engage with the customer. The use of such information could assist the customer in times of disruption but also general provision of running information and the delays encountered in single and multi-leg journeys resulting in the passenger awareness increasing, and advice on delay compensation being relevant to that passenger and the encountered experience. Rail staff could use the information to advise the passenger on anticipated delay minutes at their destination, the qualification for delay compensation, the train operator at fault given the scenario offering a vastly improved experience for the passenger. This functionality is easily available in existing mobile applications, such as Tracsis' CHARM app, showing that it would be very quick to make improvements around rail staff having the information in the palm of their hands to respond with specific passenger queries.

Information requirements

75. It is important that there is commonality in the information provided to passengers about delay compensation across the different methods of communication. Information provided online, in the station, on board and in person should be consistent. Our proposals require train companies to set out details about the delay compensation scheme (including delay thresholds and entitlements), how to claim and what to do when a claim is rejected, as well as the arrangements applying to season ticket holders (where they are different).

76. We recognise that providing such detailed information in-person may, in certain situations for example by staff on the train, be more difficult. Nonetheless, we consider that providing this level of information in response to a passenger enquiry is a reasonable expectation

Proactive provision of information during disruption

77. In addition to the above requirements on the general provision of information, the CoP also requires train companies to proactively provide their passengers with information on delay compensation during service disruption. This is obviously a critical point at which passenger awareness of their potential eligibility and entitlements can be most effectively communicated. Research by Transport Focus highlights the wishes of passengers to be told of their right to claim via announcements, the handing out of forms, and via text and email.

78. We recognise that incidents of disruption can present a number of challenges to the railway. Train companies will often already be providing passengers at crowded stations with service information, and we acknowledge that rail staff will have a number of competing priorities at such times. Announcements at large or busy stations with multiple platforms and frequent service operations regarding delay compensation may also be problematical. However, we are aware that many train companies are able to provide information about entitlement to delay compensation during or after disruption, for example via announcements on board the train both during the course of the journey and on arrival at the station.

79. Noting the importance of providing information about delay compensation at the time of or shortly after the disruption, we expect train companies to make reasonable efforts to do so. Therefore, we propose that this includes:

- a. In-train announcements when a train's arrival at a station may be above the relevant time threshold for delay compensation on that service. This may also include announcements via information screen displays.
- b. Where staffing levels allow, on board or in-station distribution of delay compensation details.
- c. Where service patterns and passenger numbers permit, in-station announcements where a train's arrival may be above the relevant time threshold for delay compensation, or where there is generalised disruption.

d. Online, including via social media and, where appropriate, email or text to passengers who may have been affected.

Comment 7: Passengers generally purchase tickets in advance or on the day and Tracsis could contribute to the provision of information in both categories of general and when disruption occurs via the CHARM app and a variety of delay compensation information solutions during and after disruption. It is generally accepted that the train operator does not always know who is travelling on a given train which presents challenges to deliver a first class and direct service to those passengers when disruption occurs. Tracsis could support with a wide range of options to help achieve improved and increased awareness and facilitate the provision of information and delay compensation via:

- The 'Check in' Service for frequent passenger. The My Account areas could facilitate a 'check in' type service when the passenger would indicate their departure station (suggestion made by geolocation, a location stamp of the mobile phone at this time could be captured as further confirmation of entitlement), the ticket information stored would identify the start and end stations and present a suggested train for the passenger to select. In the event that this train breaches a delay compensation threshold upon arrival at the passenger's destination the passenger would be notified that a claim will automatically be submitted on their behalf based on the details contained within the My Account. In the event of limited mobile data signal the above process could also be facilitated via SMS interaction.
- A 'Monitoring' Service for frequent passenger the My Account areas could permit passengers to have nominated journeys potentially in addition to nominated times which would allow a monitoring service to proactively notify a passenger of a qualifying delay upon arrival at a destination station. One perceived issue of this is that the passenger may not have travelled on that particular service but as their ticket is valid they could if so inclined submit a fraudulent claim. To combat this the passengers previous claim history could be analysed and taken in to account when making suggestions.
- For the passenger who has booked their ticket through the operators webtis. Tracsis already provide 'Zero Click' and 'One Click' solutions to cater for this scenario. This can be driven purely based on the ticket type, i.e. advanced ticket for specific trains could be 'Zero Click' whereas open/anytime tickets would be 'One Click'.
The 'Zero Click' solution (if enabled by the operator) will automatically create a claim and issue delay compensation through either a) the passengers chosen compensation method when purchasing the ticket or (please note this does not have to be the original purchase card) b) if no default compensation is present or available via PayPal, this is communicated to the passenger via email with a predefined period of time allowed for the passenger to nominate an alternative compensation method. Ultimately, the passenger need take no action for the claim and compensation to be issued.
The 'One Click' solution notifies the passenger by email (or text) based on the booked train encountering a delay over the threshold and requires confirmation from the

passenger that they travelled on that service and were impacted by the identified delay. At this time the passenger is also able to identify their chosen compensation method.

- For the Ad-hoc passenger who has booked their ticket through a non-operator affiliated webtis (i.e. The Trainline, Redspottedhanky). Where the booking includes a seat reservation the information held within RARS2 may be able to be interrogated to identify the passenger and associated tickets and follow a 'One Click' style interaction.
- Smartcard automated compensation can be facilitated through the use of the Tracsis intelligent algorithm that assesses the previous days journeys based on the HOPS tap in/tap out data made available. This utilises a combination of real time running information and the HOPS data to identify where a given journey is impacted by a delay or cancellation and requires the passenger to have a 'My Account' profile to facilitate the link between the passenger, the Smartcard and their preferred compensation method. This could be configured to 'Zero Click' or 'One Click' depending on the requirements. Where a passenger does not wish to have a 'My Account' and submits a claim manually the Tracsis submission portal would still utilise the Smartcard ticket, HOPS data and real time running information to automate in so far as possible the assessment of the submission for fulfilment.
- In addition to the above if it is required to compensate passengers for delays below the minimum threshold Tracsis could facilitate this for tickets purchased through the operators own webtis via a registered 'My Account'

The above services would be in addition to the more traditional posters, flyers, online information on the operator's websites, any at station or on-board announcements and any provision of information via the CHARM application used by rail staff.

80. During disruption it is important that train companies prioritise the most important information that will allow passengers to make a claim. We propose that the company makes reasonable efforts to provide, as a minimum, information about the delay compensation scheme, the length of the delay and the passenger's potential entitlements, how to claim and where to find out more information. We would expect the train company to be able to demonstrate that it provided this information or made reasonable efforts to do so, should ORR seek evidence of how it complied with this requirement.

Consultation questions

Q4. Do the proposals for the provision of information

- online
- on board
- in stations
- in person

provide sufficient clarity and assurance for train companies and passengers?

Q4 Answer: Tracsis believes that generic messaging can only go so far in raising awareness. We believe that a much more personalised direct approach will reap rewards in greater awareness and result in more valid claims submitted. Without a standardised method and implementation across all stakeholders the issue of variable levels of success will always be present. Lack of consistency and operator interpretation as to their responsibilities will continue to deliver inconsistent results and a poor passenger experience with the current confusion levels maintained. Our suggestions are outlined in the above **Comments 5, 6 & 7**. Furthermore, the proposal does not offer any clarity and assurance around specific franchise mandated committed functionality designed to help improve/simplify the DR process for their customers (with Advance tickets) the "one-click" claiming. Without suitable awareness of this process, when a rail passenger receives an email with "click here to claim your money back" and there is no reference on the Train Operators website to say they have implemented this feature and not to panic it is not a scam, wisely the customer does not respond to the email - this hiding the awareness undermines the good industry efforts to get enhancements included in the newer franchise commitments.

Additionally, and specifically for different medium:

Online

The wording "display relevant information of delay compensation", does not specifically mention the inclusion of FAQs, which aim to provide awareness and understanding of the more complex, less straight forward scenarios. Including the need to have FAQs which detail more complex journey travel as part of a national integrated rail network provides, would help passengers to know what to do in more complex situations and more appetite/confidence to claim with the correct information needed for a speedier and accurate claim decision.

On board & In Stations & In Person

Awareness can always refer (written or verbally) back to the Train Operator's website for more information, with written poster details having a quick links, for example with QR codes, to link to more rich information source on the Operator's website.

There should be awareness from onboard Train Operator staff, and the industry in general, that multi-leg passenger journeys can have their overall planned journey, which is what is measured against for Delay Repay claim, trigger Delay Repay threshold when each individual train taken are not above Delay Repay lateness themselves. This occurs when a person has a planned connection. For example, 1st train is late (say 12 minutes) & the passenger misses their planned journey's connection (their planned journey had a 8 minute window to change trains). Onboard staff will not know every individual's overall journey to know that they have missed their connecting service, and will not be able to inform the passenger that they are late and entitled to delay repay (at that point it is not known if they will be above the Delay Repay Threshold at the journey's end station), & their 2nd train (next/alternate train service, not their planned train service) is not above Delay repay lateness threshold to it's planned time arrival, but the passenger is over their specific journey's lateness threshold.

Guidance should be detailed in this proposal regarding trains arriving at known larger interchange stations above what that stations minimum threshold for planned changes allows

for in the timetable should trigger an appropriate Delay Repay announcement for passengers with onward rail travel who are due to miss their connecting train.

Q5. Is the list of the information requirements comprehensive? What, if anything, should be added (or removed)?

Q5 Answer: Tracsis has documented our thoughts and suggestions in the above **Comments 5, 6 & 7** and **Q4 Answer**.

Q6. Are the requirements for proactive provision of information by train companies during disruption clear and proportionate? Are there any further requirements which should be specified?

Q6 Answer: Tracsis has documented our thoughts and suggestions in the above **Comments 5, 6 & 7** and **Q4 Answer**.

Q7. Any there any other requirements you consider would be necessary and proportionate to improve passenger awareness of delay compensation?

Q7 Answer: Tracsis has documented our thoughts and suggestions in the above **Comments 5, 6 & 7** and **Q4 Answer**.

3. Improving Claims Processes

Summary

81. In this chapter, we set out the case for making changes to improve the processes for claiming delay compensation. We also set out the draft proposals in the CoP designed to achieve those improvements.

Proposals for improving the claims process

83. The purpose of this section of the CoP is to establish clear baseline expectations for the way in which the process for delay compensation works, with the objective of making it simpler and quicker for passengers to claim. We focus on two key aspects: the appropriate timescales for processing a claim, and the information requirements that are necessary and proportionate for a claim to be processed. Our draft requirements for improving the claims process are set out in Provision two of the draft CoP in **Annex B** of this document.

Timescales for processing delay compensation claims

84. It is important that passengers have clarity as to how their claim for delay compensation will be handled and the timescales within which claims will be processed.

Comment 8: Clear signposting and succinct FAQ should go some way to providing the clarity and information required. Upon submission of a claim the communication on screen and

via the acknowledgement process the passenger should be presented all relevant information relating to the claim, the reference number, the defined SLA and the complaints process. A single, standardised portal would further simplify and support the need for clarity and consistency.

85. The working industry standard is for claims to be processed within one month from claim submission to decision. We monitor performance using 20 working days as a proxy for the one month requirement within National Rail Conditions of Travel (NRCoT)).

This is currently an area where train company performance is generally strong with the great majority of claims being processed within this timescale. It is not clear to us that retaining requirement to process claims within 20 working days is stretching or reflective of companies' actual performance. A more demanding, reduced timescale of for example 15 or 10 working days may incentivise more passengers to claim and overcome any perception that the claims process is slow. We propose to use this CoP, and the consultation process, to establish the appropriate timescales for train companies to process claims, and whether they should be tightened.

Comment 9: One way to further improve turnaround and clarify the information would be to have a standardised approach, a minimised but standardised set of data requirements, a single portal for the capture of the delay compensation request and a requirement for operators to implement 'One Click' or 'Zero Click' processes which would reduce the input needed from passengers and increase awareness by default.

The reduction in the number of fields in the manual submission process will have a direct impact on the automation rates and so care should be taken and the impact assessed as it would not benefit any interested party to introduce delays in assessing the validity of a claim for approval which would have an impact on the passenger receiving the award and potentially more manual effort/costs/errors incurred within the operators assessing the claims.

86. There may be occasions where the train company needs to contact the passenger to obtain information which has not been provided at the outset. We consider it reasonable that the company should make such a request within five working days. The necessity to seek this information should become increasingly rare as a result of the improvements in information requirements set out in the section below are realised. For this reason, in our view, it is not reasonable to 'stop the clock', effectively pausing the requirement to process the claim. This will also act as an incentive on train companies to ensure that their requirements for information are clear and proportionate. Nonetheless, we recognise that train companies cannot leave claims open indefinitely; we propose that claims can be closed if the passenger does not respond to the request for further information 20 working days after the request was made, although we would expect flexibility to be applied where necessary for example where the claimant has been in hospital.

Comment 10: The Tracsis system has an inbuilt claim clock which commences on submission of the claim and currently activates/deactivates depending on the 'owner' of the claim. The front-end passenger interface includes field level validation based on the options selected

by the passenger i.e. where the passenger selects a BACS as their compensation method then the system requires the appropriate sort code and account number (which is validated using a BACS look up service). After submission the very first check carried out by the Tracsis system is to ensure all relevant fields have been populated and meet with the front-end submission rules. This is prior to that data being assessed against the industry data sources such as DARWIN, LENNON etc. It is only in the event that ticket could not be found in LENNON based on the passenger's data entered that there would be a need for the submission to revert back to the passenger for further information. It is highly unlikely that this automated process will ever breach the 5-day proposed deadline. At this point, the claim would be assessed for automation or not and if automatically approved the passenger would receive the communication within minutes, therefore never breaching the current or proposed shortened SLA.

It is not beyond the realms of possibility that a request for further information from the passenger could sit with that passenger for 10 days and unfairly impact the operator if the clock was to remain running given this is beyond their control or levels of influence. Our existing process sends reminders to the passenger at pre-set frequencies and issues a final request before closing the claim automatically at 28 days.

By maintaining a full audit trail of when a claim status changes in ownership any permutation of time can be calculated i.e.

1. Total time from claim submission to claim decision
2. Total operator time from receipt to decision
3. Total passenger time from submission to decision
4. Additional time for subsequent appeals (which is maintained separately to the original decision clock)

This data is provided in MI reporting to allow the operator to manage the workflows in the most efficient manner and include in subsequent reporting requirements.

Where a claim is referred to an operator agent for assessment and approval/rejection there are typically four reasons why this may occur:

1. Ticket details provided by passenger not be found in LENNON or multiple instances found which require review.
2. The claim has triggered one or more fraud indicators which need assessment by an agent based on the operator's risk profile.
3. Insufficient DARWIN information to assess the delay.
4. Authorisation and quality assurance which are operator specific.

Referred claims within the Tracsis system are present for review by chronological ascending order and these are worked by the agents determined by the team leaders. Based on the volumes experienced by the operator which can be influenced by bad weather, infrastructure issues, trespassing etc the time taken for an agent to work a given claim can

vary. During this time the operator clock continues to run but any time spent with the passenger is not included.

Due to the highly configurable and flexible nature of the Tracsis delay compensation solution this claim clock feature could quite easily be used to support the desire to further improve the passengers experience but also enable the operators to demonstrate compliance within the time that they truly have ownership of the claim and can therefore be assessed in a fair and proportionate manner.

Communication

87. Effective communication by the train company in the handling of the delay compensation claim will help ensure that passengers have confidence in the process. This extends to giving the claimant a route to follow-up on the progress of their claim. Our proposals require train companies to inform passengers when their claim is taking longer than the set time to process, together with the reasons for it doing so and a date when the claim is likely to be completed. Similarly, we want companies to be clear on the reasons why a claim has been rejected and what the passenger can do to challenge the decision; more than 15% of claims are currently not approved

Comment 11: The Tracsis system has a configurable “My Account” area where passengers (who register) have access to information pertaining to their claim, it’s status, an ability to update information where required (i.e. to provide additional details for consideration). Where a passenger does not register for a ‘My Account’ the Tracsis system has a claim history portal where the passenger has access to a limited set of functions but can see the claim status, provide additional information and submit an appeal against a decision made by the operator, be that appealing a rejected claim, or appealing an approved claim but disputing the value of the delay compensation.

Consistency of standing data, resulting in misinformation to the passenger should be addressed, rejection reasons are currently subjective when assessed by an operator agent with different agents potentially advising different rejection reasons for the same claim. Training could address to some extent however the rejection reason attributed could be defined as part of the automated process and pre-selected presented to the agent for review and confirmation.

Where an agent rejects a claim, the specific reason is clearly detailed in the communication to the passenger, along with instruction on how to appeal the decision. Where the system rejects a claim, the specific reason is clearly and consistently detailed in the communication to the passenger, along with instruction on how to appeal the decision.

Claims process information requirements

88. We expect train companies to ensure that the information they seek is the minimum they require to successfully process and approve a delay compensation claim. The process should be simple and, wherever possible, standardised across claim methods and ticket types. We recognise that this is an area where flexibility and discretion on the train company’s part will always be necessary to allow for innovative technology-based solutions. Nonetheless, we note research which suggests that some may require up to 24 pieces of

information; this is clearly not proportionate and may be a barrier to passengers accessing the claims process.

89. We have therefore put forward a purposive approach, with the onus placed upon the train company to make clear why a specific piece of information or form of evidence is required. We also make clear our expectation that train companies will give due consideration to alternative forms of evidence, provided that the proof offered is of an equivalent standard and sufficient to demonstrate the passenger's delayed journey, and will allow the company to monitor for duplicate or fraudulent claims.

Williams Review – medium-term improvements

90. In our response to the Williams Review, we recommended that train companies work together with Transport Focus to create a single standard form for claiming compensation. This should be simple and require only the essential information necessary to process a claim. This should, as far as possible, be the same for passengers claiming via a paper form as through other means.

91. We further recommended that RDG consider the development of a single streamlined system for passenger compensation accounts via a central provider such as National Rail Enquiries (NRE). This provider could operate a central portal for compensation claims and provide a 'warm transfer' of information to the relevant train company's system.

92. We also recommended that train companies automate their claims processes to the greatest possible extent, including the use of automated (one-click) claims processes so that more passengers can access compensation in ways that are convenient to them.

93. We consider that these remain viable options for improvement in the medium-term and encourage the relevant parties to consider how they can deliver these improvements.

Comment 12: Working with our Train Operator partners and as part of the privacy by design process Tracsis had already reviewed the existing data requirements, identifying the underlying need for any given information request, the validity of the request, the use of the data captured and the impact on any given process be that automation, fraud, Train Operator Management Information. It is important to consider automation, fraud other downstream, processes when assessing data capture requirements as paring back to far may have a detrimental impact on these, and ultimately impact the passenger and/or the operator.

Tracsis has provided a prototype simple delay compensation NRE extension submission for consideration to RDG and Transport Focus providing a single, simple webform for the capture of all delay repay claims input by the customers impacted by a delayed or cancelled train. The central HUB would in theory be a gateway to all operators and we would validate the data in the first instance, identify the delay and the operator at fault and pass the validated information to the operator to process and fulfil the compensation back to the passenger directly. Our intention is to provide a solution that improves the passenger experience while supporting the operators and the Industry at large. We want to support and protect the relationship between the operator and their passengers, so our proposal is to provide a verified data submission which enhances the passenger experience, reduces internal processes within the operators and satisfies the requirements of interested parties within the Industry.

Tracsis believe that this single, simple form would support the reforms required and has additional benefits in that we could also integrate it into our Industry wide fraud prevention/detection platform which would identify and if required reject duplicate claims across ALL operators but also has the enhanced logic contained within which may at the operators configuration choices supplement their own internal delay processing engines (subject the relevant data sharing agreements etc).

In addition to the proposed single delay compensation hub Tracsis can support with a wide range of options to help achieve improved and increased awareness and facilitate the provision of information and delay compensation via:

- Zero Click and One Click solutions: For passengers who have booked their ticket through the operators webtis Tracsis already provide 'Zero Click' and 'One Click' solutions. This can be driven purely based on the ticket type, i.e. advanced ticket for specific trains could be 'Zero Click' whereas open/anytime tickets would be 'One Click'.

The 'Zero Click' solution (if enabled by the operator) will automatically create a claim and issue delay compensation through either a) the passengers chosen compensation method when purchasing the ticket or (please note this does not have to be the original purchase card) b) if no default compensation is present or available via PayPal, this is communicated to the passenger via email with a predefined period of time allowed for the passenger to nominate an alternative compensation method. Ultimately, the passenger need take no action for the claim and compensation to be issued.

The 'One Click' solution notifies the passenger by email (or text) based on the booked train encountering a delay over the threshold and requires confirmation from the passenger that they travelled on that service and were impacted by the identified delay. At this time the passenger is also able to identify their chosen compensation method.

- Smartcard automated compensation can be facilitated through the use of the Tracsis intelligent algorithm that assesses the previous days journeys based on the HOPS tap in/tap out data made available. This utilises a combination of real time running information and the HOPS data to identify where a given journey is impacted by a

delay or cancellation and requires the passenger to have a 'My Account' profile to facilitate the link between the passenger, the Smartcard and their preferred compensation method. This could be configured to 'Zero Click' or 'One Click' depending on the requirements. Where a passenger does not wish to have a 'My Account' and submits a claim manually the Tracsis submission portal would still utilise the Smartcard ticket, HOPS data and real time running information to automate in so far as possible the assessment of the submission for fulfilment.

- For the Ad-hoc passenger who has booked their ticket through a non-operator affiliated webtis (i.e. The Trainline, Redspottedhanky). Where the booking includes a seat reservation the information held within RARS2 may be able to be interrogated to identify the passenger and associated tickets and follow a 'One Click' style interaction.
- The 'Check In' Service for frequent passengers. The 'My Account' areas could facilitate a 'check in' type service when the passenger would indicate their departure station (suggestion made by geolocation, a location stamp of the mobile phone at this time could be captured as further confirmation of entitlement), the ticket information stored would identify the start and end stations and present a suggested train for the passenger to select. In the event that this train breaches a delay compensation threshold upon arrival at the passenger's destination the passenger would be notified that a claim will automatically be submitted on their behalf based on the details contained within the My Account. In the event of limited mobile data signal the above process could also be facilitated via SMS interaction.
- A 'Monitoring Service' for frequent passengers. The My Account areas could permit passengers to have nominated journeys potentially in addition to nominated times which would allow a monitoring service to proactively notify a passenger of a qualifying delay upon arrival at a destination station. One perceived issue of this is that the passenger may not have travelled on that particular service but as their ticket is valid they could if so inclined submit a fraudulent claim. To combat this the passengers previous claim history could be analysed and taken in to account when making suggestions. In addition to the above if it is required to compensate passengers for delays below the minimum threshold Tracsis could facilitate this for tickets purchased through the operators own webtis via a registered 'My Account'

Physical format claims

94. As far as possible, the process for claiming via a physical form should replicate, and be no more burdensome, than the online process. For example, the claim forms should be the same unless there is good reason for it to be otherwise. Nonetheless, we recognise that there are advantages to digital, online or app-based form processes for train companies and passengers, but it is important for companies to make adequate provision for users who have a preference or need for physical paper formats. As such, we set out the minimum expectation for train companies, including on availability of claim forms at staffed stations and to download, and how such forms can be submitted.

Accessibility of claim format

95. We recognise as well that passengers with specific disabilities or other protected characteristics may be unable to easily use or access either physical or online claim methods. We set out a clear high-level requirement for train companies to take the needs of these claimants into account to ensure that they are able to access the delay compensation process.

Online claims process

96. The majority of claims are submitted online (including via smartphone apps), and it is vital that train companies make this as straightforward as possible for claimants. We recognise that technology, with the efforts of companies, has brought considerable change, innovation and improvement in recent years, and we want to make sure that the CoP does not prevent them from continuing to do so. A small proportion of passengers, for example, are also already benefiting from automatic - or more automated - forms of compensation where smartcards are in operation, or tickets have been bought in advance and passenger contact details are known. Evidence indicates this has led to an increase in the claims and payouts of delay compensation. However, these improvements have been slow to emerge and have not been replicated universally across the network.

97. We also want to establish minimum standards in this area, which the CoP sets out. These basic requirements tie-in with those that were set out in the chapter on provision of information. We expect a prominent link to the claims process to be available from the homepage of the train company's website, and clear information, including FAQs, for the passenger about all relevant aspects of delay compensation scheme and claims process, including the appropriate requirements for evidence of travel.

98. We also want to emphasise our expectation that, where train companies allow for passengers to establish online or app-based accounts to save their details for the purpose of booking tickets, then passengers should also be able to use these same (or equivalent) accounts to claim compensation. This should include the possibility for season-ticket holders to save the details of that ticket. This will facilitate ease of claim for passengers, particularly those that regularly travel with the same train company.

Payment methods

99. There are existing obligations on train companies in the National Rail Conditions of Travel (Condition 34) and in consumer law. We expect companies to continue to comply with these requirements.

Comment 13: In addition to the now common place options of NRTV, cheque, BACS, PayPal, Credit/Debit Card and Charity donations Tracsis believes that offering the passenger a more diverse list of popular retailers should be made available. This can be done through the use of third-party aggregators whereby the nominal value of compensation is given to the passenger and they choose where to redeem. This can offer cost savings based on a) the transaction fee being lower than legacy options and b) depending on the retailer a rebate % being made payable.

Consultation questions

Q8. Do you have a view on the timescales, and associated requirements for contacting passengers, that we have proposed?

Q8 Answer: Yes, we have documented our thoughts and suggestions in the above **Comments 8 - 13**.

Q9. Are the proposals on information requirements clear and proportionate? Do they provide sufficient flexibility to reflect the variety of claim and ticket types, whilst addressing the risk of unduly onerous information requirements?

Q9 Answer: Tracsis has documented our thoughts and suggestions in the above **Comments 8 - 13**.

Q10. Is the provision on alternative forms of evidence clear - does it allow adequate flexibility for innovative solutions?

Q10 Answer: Tracsis has documented our thoughts and suggestions in the above **Comments 8 - 13**

Q11. Is the provision on physical format claims clear and proportionate?

Q11 Answer: Tracsis has documented our thoughts and suggestions in the above **Comments 8 - 13**

Q12. Are the requirements with regards to online claim processes clear, proportionate and comprehensive?

Q12 Answer: Tracsis has documented our thoughts and suggestions in the above **Comments 8 - 13**

Q13. Any there any other requirements you consider would be necessary and proportionate to improve the claims process?

Q13 Answer: Tracsis has documented our thoughts and suggestions in the above **Comments 8 - 13**

4. Continual improvement and reporting

Summary

100. In this chapter, we set out our expectation that train companies should seek to improve, and report upon, their performance. We also set out the draft proposals in the CoP designed to ensure that they do so.

Introduction

101. Having established in chapters two and three the baseline CoP requirements for improving awareness and process, we now set out the content of the CoP designed to drive continuous improvement in train companies' delay compensation arrangements and to report on how they are performing in relation to delay compensation.

Improvement and innovation as a characteristic of customer-focused sectors

102. ORR wants to see a rail sector that is focused on the interests of its passengers. We want train companies to seek to improve all aspects of the customer experience. This includes, where passengers have experienced delay, the provision of compensation.

Comment 14: The Tracsis CHARM App is an intuitive interface that can be extended to include access to real time arrival and departure boards in addition to onward journey planning using OJP from NRE to provide a much-improved customer experience assuming rail staff have the time to engage with the customer. The use of such information could assist the customer in times of disruption but also general provision of running information and the delays encountered in single and multi-leg journeys resulting in the passenger awareness increasing, and advice on delay compensation being relevant to that passenger and the encountered experience. Rail staff could use the information to advise the passenger on anticipated delay minutes at their destination, the qualification for delay compensation, the train operator at fault given the scenario offering a vastly improved experience for the passenger.

Other modules within the interface include:

Gesture of Goodwill: On-board and station staff are empowered to offer gestures to passengers who have experienced a substandard experience. Full audit trail and built in caps and authorisation levels as standard and the gesture is redeemable at over 160 retail outlets.

Permit to Travel: Allows onward travel for passengers who have a legitimate reason why they do not have a ticket (most likely season ticket holders). This allows the passenger to continue their journey while on the operators own network with a full audit trail of where the ticket was seen/scanned as it passes through gate lines.

Revenue Protection: Removes the traditional paper-based forms, populates a back office application which includes a full workflow management engine to support passenger payments, reminders, escalations and court prosecutions.

103. The CoP establishes baseline expectations across the train companies. Properly implemented, it will give passengers greater confidence that train companies will meet good standards in how they deal with delay compensation. However, we want the industry to strive for excellence in this area, rather than only aiming for compliance with common-denominator requirements.

104. Continual improvement will require train companies to monitor their own performance. The analysis of this performance data will help companies to identify areas for improvement, and potential options for how these areas might be addressed. Where new initiatives are trialled, we want to see the experience being shared for the benefit of the broader industry and travelling public. Shared reporting of performance data with industry colleagues, passengers and ORR will facilitate benchmarking and accountability.

105. Clear, consistent and regular publication of performance data will also help to raise public awareness of delay compensation and allow ORR to monitor train companies' performance. As such, we have set out details of how we expect them to report on their progress, both to their passengers, and to ORR.

Continual improvement

106. Innovation will be necessary to keep pace with the opportunities and challenges presented by new technology and changing customer expectations. We want to provide headroom for train companies to continue getting better in the way they deliver compensation services. We are using the CoP to establish a clear expectation that they do so.

107. We are aware that train companies already have, to varying degrees, developed delay compensation processes that benefit their passengers and encourage them to claim. For example:

- Southeastern have implemented upgrades that allow passengers to save an app-based account. This provides for easier claims, the ability to track multiple claims, and a PayPal option that will pay money within an hour of the claim being approved. They also provide an option for payment via e-voucher, which allows the passenger to accumulate small payments of compensation before they are redeemed.
- Some train companies provide an option to the passenger to donate their compensation directly to charity. According to research, only 25% of passengers claimed when the value of their ticket was less than £5 compared with 43% when it was greater than £5. Whilst passengers may not feel that claiming for small amounts is worthwhile, they may be incentivised to do so where this option exists.

108. Train companies themselves are well placed to explore the potential of new, different approaches. Provisions 3 and 4 of the CoP, attached at **Annex B**, set out our expectation that they continue to do so, and we propose that they report to ORR on a yearly basis about the steps that they have taken to improve passenger awareness of delay compensation and the claims process.

Comment 15: Tracsis is a firm believer in the principle of continuous improvement and development and would be happy to engage with the relevant bodies (be that RDG, DfT, ORR and Transport Focus etc) to deliver ongoing innovation focussed around best passenger experience, revenue protection, new and emerging ticket technologies and performance reporting. Tracsis could host and facilitate regular forums gathering interested parties and stakeholders to challenge and capture the status quo and resulting change innovations. This could be extended to include passengers to gather essential feedback and suggestions on meaningful process improvement. This is even more important in the ever-changing landscape of the UK rail industry.

Reporting for passengers

109. To help improve passenger awareness and provide a measure of public accountability about their performance, we propose that train companies publish performance data online on a quarterly basis, alongside other information related to delay compensation. We anticipate that clear information about the volume of compensation payments and response times may serve to encourage passengers to submit a claim.

Comment 16: Tracsis currently provide our Train Operator partners with this information which is available as standard in a number of formats. This information can be transposed onto the operator's websites as required.

110. To aid passengers' understanding of performance, train companies may also wish to provide further information, such as data on punctuality performance, and narrative information, for example the impact of storms, enhanced compensation arrangements, etc. to provide further context. Any such additional information should serve to clarify the train company's performance against the key metrics outlined above.

111. Train companies may also wish to consider whether to publish alongside this data the steps that they have taken to improve passenger awareness of delay compensation and the claims process.

Comment 17: Tracsis can provide regular (as and when required) updates on functional releases throughout a given period and a retrospective roadmap review at the end of a period.

Reporting to ORR

112. ORR currently collects 'core data' performance information on delay compensation from train companies for every rail period, which we consolidate and publish online. To monitor compliance with the new provisions within the CoP we will, however, require companies to gather and submit information in further areas.

113. Firstly, to help monitor train companies performance on the awareness and process provisions of the CoP, we propose that train companies survey claimants on whether (and, if

so, how) they received delay compensation information as part of their booking and journey, and the ease of the claims process.

114. These survey questions should be included as an automated, optional part of the online claim process. We anticipate this information being gathered and submitted to ORR on a quarterly basis.

Comment 18: Tracsis would recommend that every interaction with a passenger be that the initial ticket booking, 'One Click' delay notification, claim acknowledgement or claim decision should include a link to a suitable survey tool. This will allow the operator to gain valuable insight as to the passenger's experience. This could be as simple as 'How would you score us' – on a scale of 1 to 5 through to free text entry by the passenger and subsequent analysis through a sentiment engine.

115. Secondly, as noted above, we propose that train companies provide an annual summary of steps taken to help improve passenger awareness and to make the claims process better for passengers. This may comprise a qualitative description of initiatives and activities, alongside any quantitative data on their efficacy. We anticipate publishing this information as part of or alongside our Annual Rail Consumer Report.

116. ORR may also undertake or commission additional targeted surveys or research, which may include mystery shopper exercises. We will raise any issues that we identify with train companies, and take escalation action as appropriate in accordance with our existing policies.

Consultation questions

Q14. Do you have a view on the requirement that train companies report annually on the steps taken to improve awareness and processes for delay compensation?

Q14 Answer: Yes, Tracsis has documented its thoughts and suggestions in [Comments 13 - 17](#)

Q15. What is your view of our proposals for passenger surveys:

- is it proportionate to survey every claimant for their views on awareness and process?
- If not, what might the alternatives be e.g. specified number or percentage?
- Should these be standardised?
- How frequently should they be undertaken?

Q15 Answer: Tracsis has documented its thoughts in [Comment 18](#)

Q16. Are there any other matters upon which it would be helpful to seek information?

Q16 Answer: Tracsis has documented our thoughts and suggestions in [Comments 13 – 18](#)

5. Third Party Intermediaries

Summary

117. In this chapter, we set out our proposals for introducing a requirement in the delay compensation CoP to oblige train companies to accept claims from Third Party Intermediaries (TPIs). We also set out the draft proposals in the CoP designed to achieve those improvements, together with the requirements of the Code of Conduct to which TPIs must adhere.

Introduction

118. In chapter one, we set out the case for increasing the involvement of TPIs in the delay repay market, albeit in a controlled manner to mitigate identified risks. We set out below our proposals for implementation of this objective.

119. We propose to introduce:

- A requirement on train companies (the detail of which is set out in the CoP) to work and reasonably cooperate with reputable TPIs; contingent on
- TPI compliance with a new Code of Conduct (TPI Code), which will establish a set of agreed standards for the conduct of TPIs.

120. Provision five of the CoP, (attached at **Annex B**) sets out the relevant requirements on licence holders. The requirements to which TPIs must adhere in order to benefit from this 'access to the market' are set out in the proposed 'TPI Code' at **Annex C**.

121. We propose ways in which train companies should work with TPIs and, for TPIs, standards of good practice in areas such as probity, fraud protection, and transparency. We also consider options for governance and dispute resolution. The proposed TPI Code covers, based on engagement with industry, parameters and protections around how TPIs provide their services to customers and how they should interact with train companies.

122. ORR has engaged with TPIs, discussing their current standards and aspirations for a TPI Code. This included a roundtable workshop on the developing policy proposals. The effectiveness of the TPI Code will rely on constructive engagement between TPIs and train companies. We have seen positive signs in this respect during our engagement with industry.

CoP obligations for licence holders

123. Our draft CoP includes a general requirement on train companies to work and co-operate with those TPIs who are compliant with the TPI Code, to the extent necessary to enable the TPIs to provide services to passengers. This co-operation must both facilitate

passenger claims and help to swiftly identify and resolve any issues or questions of non-compliance with this CoP or the associated TPI Code.

124. In the case of TPIs who submit claims on behalf of passengers:

- Train companies must not refuse to receive delay claims made on behalf of passengers by any compliant TPI;
- Train companies must treat delay claims submitted via compliant TPIs on the same basis as claims submitted by passengers. Communications and payments must be made via the TPI where the passenger has indicated their preference for this; and,
- The 20-day timescale for processing a claim submitted via a TPI will run from when a train company receives a claim from the TPI, until the train company has communicated its decision to the TPI.

125. Where train companies identify problems with a TPI, including suspected issues with duplicate or fraudulent claims, they must raise this issue with the relevant TPI (or TPIs) before taking any action. Where a train company is reasonably of the view that a TPI is not compliant with the provisions of the TPI Code and attempts to address this via engagement have not been successful, it may then decide to stop accepting claims submitted via that TPI. Train companies may wish to notify ORR if such a circumstance arises.

Comment 19: A TPI would have no control over a passenger claiming delay compensation direct with the operator and also via the TPI other than to process the submission of manual claims via the Tracsis delay compensation hub as this would allow for cross checking of duplicates within the operators own claim data and also cross operator checking. It would also be prudent to ensure as part of the TPIs terms and conditions and disclaimers used that these be updated to confirm that the passenger has not and will not submit a claim for the same train directly to the operator and or vice versa. Without the former look up and check process the TPI would never be able to evidence compliance and an operator will continue to be able to exercise the option to cease accepting claims submitted with no course of remedial action available to the TPI.

126. We consider that in most cases failure to comply with the TPI Code will be obvious. For instance, it will be clear to train companies when claims submitted on behalf of passengers fail to meet the required evidential standards. TPI compliance with their transparency obligations will be discernible from viewing their passenger facing website or app. As TPIs would be required to be members of the Ombudsman scheme under our proposals, any misuse or mishandling of passenger money may become discernible through passenger complaints. TPIs are also required under the Code to respond to reasonable enquiries from train companies (or their association the Rail Delivery Group) about their compliance.

127. In the event of a train company refusing to accept its claims, a TPI may decide to register a complaint with ORR about the train company's compliance with its obligations

under this CoP. ORR will consider such cases on their merits, which will likely, in the first instance, involve an assessment of whether a TPI is compliant with the Code.

Standardisation of forms and facilitation of automation

128. In the case of TPIs who help passengers to make claims through train companies' own websites (e.g. through mobile apps which automatically fill out fields on train companies claim forms), train companies must take appropriate steps to enable compliant TPIs to facilitate the automation of claiming by passengers. In our draft CoP, we have not set out a specific means by which train companies should do this. The number of train companies involved and the varying approaches that they may take to website development would make such a prescriptive step, in our view, disproportionate.

129. One potential way forward might be for individual train companies to standardise the data required for claims and create an Application Programming Interface (API).

Comment 20: As mentioned, in Comment 4 above, there needs to be a process that can look up and or/match claims upon submission to see if a duplicate already exists. The Tracsis proposal which has been shared with RDG, Transport Focus, ORR and DFT is to supply a service extension to NRE which is a single, simple claim submission portal that passengers and approved TPIs can submit claims via. This single submission portal would have the minimum agreed fields required to submit a claim and would be clearly signposted and very easy to navigate for passengers and would have appropriate industry standard APIs for TPIs and train operating companies alike. Field and data validation would prevent errors in submission leading to unnecessary rejections and a 'My Account' feature would facilitate the secure storage of data, ticket information, nominated journeys etc to minimise the input further. The 'My Account' would enable passengers to update any information directly allowing the claim to be reconsidered for submission in the event that there were errors in the initial data provision. The TPI could submit claims to this portal also and subject to configuration rules may or may not be applied depending on the outcome of this review and requirements gathering.

All claims **could** then be validated in the Tracsis central, fraud application where the most rudimentary check, the 'duplicate claim rule' would pass or fail. Additional rules can be configured by train operating companies' requirements to enable further fraud checks which could supplement the train operating companies own inhouse CRM/Claim management processes with a confidence score based on the outcome of the fraud rule set. Once the process completes the claim(s) would be submitted to the relevant train operating company for approval/rejection, communication with the passenger and fulfilment of compensation.

The benefit of this approach is four-fold.

Passenger: There is one place to submit a claim for delay compensation. The form is clear, simple and where the passenger has purchased tickets from NRE these could be displayed within the 'My Account' area. It is a standard form, clear signposting and interactive should validation fail with clear instructions on how the passenger can remedy the issue. The passenger has one single, simple form and doesn't even need to know which train operator managed the train they were on.

Train Operating Companies: Adopting the NRE service extension would remove the need to host and maintain a branded submission form but continue to offer a differentiated service through the use of their claim managements systems/CRM. The claim submitted via API would have been validated against a number of Industry Data Sets (LENNON, DARWIN, GoldStar to name but a few) which would improve the quality of the data being passed through to train operating companies allowing them to improve their automation rates and thus meet their as is SLAs or the intended shorter SLAs. The duplicate claim check (with data sharing agreements) could be expanded to cross train operating companies claim checking which also identifies potential fraudulent submissions using the same claim data submitted to multiple train operating companies.

Where a train operating company wants to incentivise a passenger (for example Compensation Options) these variations could be accommodated in the single passenger submission form to ensure no loss of innovation. The relationship between the train operating companies and the passenger would remain intact, with the train operating company retaining the ability to know and incentive the passenger, attract and build loyalty as all communication would still directly flow between the train operating company and the passenger. Enhanced security could be added to the 'My Account' set up process such as integration with CIFAS, National Hunter, Experian etc to further mitigate fraudulent attempts to submit claims.

Financially the train operating companies would retain the final approve/rejection decision of the claim and so would be able to control, monitor and report on this in any internal or external reporting requirements. Tracsis would provide a reporting dashboard to facilitate the reporting requirements within the claim submission process, with standard and bespoke reporting capabilities to deliver key information in a format that could be ingested into an existing reporting application or used standalone

Accepting claim submissions via an NRE extension service would facilitate monitoring of TPI submissions, by volume and other quantitative measures, recording whether a TPI was approved and provide an audit trail for future reference. A very simple process to prevent unauthorised TPIs or those that are no longer authorised would be standard.

Regulatory Bodies: One simple standardised form, clear and easy to navigate for the passengers use with built in validation, extensive configurable fraud detection and prevention capabilities which maintains the relationship between the train operating companies and the passenger and enables better, more accessible reporting and MI.

Standardised reporting across the Industry and by train operating companies would be easy to access once the reports had been specified and industry wide fraud statistics could be deployed, used to raise awareness, combat fraud, protect revenue and protect the fee paying passengers who want to use and enjoy the railway.

Third Party Intermediaries: One standard API submission process with capabilities of accepting bulk claim submission with built in duplicate and fraud prevention and detection capabilities. While this report considers a potential payment to the passenger by the TPI Tracsis believe that this undermines the relationship between the train operating companies and the passenger and therefore would prefer the fulfilment be carried out by the train operating companies and any remedies offered emanate from that operator. The alternative approach could lead to significant reconciliation issues and disputes over payments in addition to undermining the relationship between the operator and passenger. NB: Should the requirements be determined to allow TPis to facilitate the payment the API submission process will be capable of bespoke enhancements to facilitate this.

TPI Code requirements

130. In order to benefit from the opportunities offered by our proposed CoP requirement on train companies, TPis in turn would need to demonstrate compliance with the requirements of the TPI Code. In order to benefit from increased market access, we propose that TPis should abide by specified criteria and behavioural standards. These are covered in detail in **Annex C**, but in summary they include requirements for:

- **Transparency:** TPis must provide relevant key information to their customers, in a reasonably prominent fashion.
- **Process:** TPis shall take reasonable steps to ensure that the claims which they facilitate are legitimate claims for journeys that the passenger has attempted to make. This will include monitoring for duplicate claims, unfeasible patterns of travel, or unlikely volumes of claims. Where a train company reasonably suspects fraudulent claims may have been issued, TPis are required to respond to enquiries, and demonstrate their use of proactive systems to detect fraudulent activity. TPis must demonstrate reasonable cooperation with train companies to resolve any issues with functionality, and the efficient processing of claims.
- **Evidence:** TPis will ensure that claims include sufficient evidence of travel, clearly establishing that a passenger was on, or attempted to travel on, a delayed or cancelled train. We would expect that this would require, as a minimum, copies of the relevant tickets forming the subject of the claim, proof of purchase, or another form of acceptable evidence, such as verifiable GPS/Bluetooth tracking data.
- **Data Quality:** TPis will ensure all information necessary to progress the claim is correctly and accurately submitted, with reference to the CoP and industry best practice guide. **Claim Status:** Where relevant, TPis will make provision for passengers to enquire about the status of their claim by providing a unique claim reference number, or where appropriate make enquiries to train companies on the passenger's behalf.
- **Payment method:** TPis will specify to the train company any preferred payment method requested by the passenger, in line with the options available. To ensure that claims can be tracked correctly, TPis will use a standard reference protocol to enable TPis, licence holders and passengers to track and verify both claim and

payment. TPIs may hold funds on behalf of passengers, if stringent criteria including the separation of accounts and prompt payments are met.

- **Data protection:** All parties must comply with the requirements imposed by relevant data protection regulations.
- **Rail Ombudsman:** In order to be considered compliant, TPIs will agree to be included in the Rail Ombudsman's scheme for customer complaints.

131. TPIs who do not wish to demonstrate compliance with the TPI Code will retain the option of continuing to operate using their current business model, albeit will not have the advantage of guaranteed acceptance by train companies.

132. The content of this TPI Code does not affect a train company's existing obligations with regards to delay compensation, as set out in franchise contracts, passenger charters, or the National Rail Conditions of Travel. Nor does it affect a TPI's or train company's responsibilities under general consumer law, such as the Consumer Protection from Unfair Trading Regulations 2008, or Consumer Rights Act 2015, competition law, or other relevant legislation including data protection law.

Implementation

Cooperation and industry-led approach

133. Train companies must, as set out above, work with compliant TPIs. TPIs, under their TPI Code, have a reciprocal obligation of cooperation.

134. Compliance with the TPI Code should be determined by industry - rather than regulator - led means, guided by the text of the TPI Code. Namely:

- It will be for TPIs to make the case that they are compliant; and
- Train companies, working with TPIs, will have to decide whether they agree (or not) with the case that has been made, and how if at all TPI proposals would need to be amended in order to become compliant. It will be up to train companies to decide how they organise themselves to carry out such work. Decisions on compliance should be made in a way that leads to certainty for all concerned and to timely and robust decisions.
- Train companies and TPIs are obliged under their respective Codes to reasonably engage and cooperate with each other in this regard.

135. ORR will keep open the possibility of a more formal 'positive accreditation' regime. In our view the implementation of a formal regime would place significant resource burdens on industry, TPIs and ORR itself. At this stage we therefore propose that the most proportionate and appropriate means of implementation of the TPI Code should be industry-led. However, if this proves to be ineffective, we will consider putting in place a greater role for ORR, or another suitable body to engage in more proactive superintendence of this market.

Compliance and steering committee

136. The effectiveness of the TPI Code and the TPI market regime will be subject to at least annual review by a Steering Committee, whose membership will include representatives from train companies, TPIs, ORR and passenger representative groups. Any recommendations for changes will be submitted to ORR for consideration. This Steering Committee will be particularly looking to share innovations and improvements to the customer experience.

137. The effectiveness of the TPI Code will rely on constructive engagement between TPIs and train companies. This will be a 'new' market, and the behaviour of its players difficult to predict. We anticipate, however, that train companies will be incentivised to accept claims from credible TPIs (failure to accept a claim from a compliant TPI otherwise risking ORR licence enforcement). TPIs in turn will be incentivised to actively demonstrate their compliance to train companies and consumers in order to reduce risks of refusal and disruption to their business.

138. Train companies will, however, retain the ability to refuse claims from TPIs who they consider have failed to meet the TPI Code. In such circumstances train companies or TPIs may wish to approach ORR for guidance. In such cases we anticipate a staged approach to mediation, monitoring and escalation. ORR retains discretion as to how it considers and deals with any individual complaint.

Dispute Resolution

Passengers

139. In order to be considered compliant with the TPI Code, TPIs will agree to be bound by decisions of the Rail Ombudsman for passenger complaints. If a passenger has any complaints about a TPI's handling of their claim they should contact the TPI in the first instance. If that fails to reach a resolution then, under our proposals, they will have the option to take the matter to the Rail Ombudsman.

Between licence holders and TPIs (and the role of ORR)

140. As set out in the CoP, if a train company or other party has concerns about a TPI's ongoing compliance with the terms of this TPI code, it shall raise those concerns with the TPI concerned in the first instance. If those concerns are not resolved the relevant party may raise the issue with ORR. In such cases, train companies should take a reasonable and evidence-based decision on whether to refuse claims from the TPI in question. Under our proposals, in any subsequent investigation into whether a train company has breached its obligation to accept claims from TPIs, ORR will not take a 'strict liability' approach. Rather, even in cases where a TPI is found to be compliant on investigation, we would take all the circumstances into account. In reaching any determination of whether a train company has breached its licence, ORR would have regard to: how reasonable it was for train companies to suspect a lack of compliance with the TPI Code (noting any assessment of evidence the licence holder had available at the time); how swiftly the train company notified ORR; and, any action the train company took to work with the TPI to ensure they were compliant.

141. Where ORR has concerns that a TPI is not compliant with the TPI Code, including as a result of a complaint from a train company or other party to this effect, it will in the first instance investigate the matter, seeking appropriate assurance from the TPI.

142. In cases where its concerns are not quickly resolved, ORR may make appropriate recommendations to ensure that the TPI is compliant. Ultimately, ORR may endorse the train company's decision not to accept claims from that TPI.

143. Where a TPI has concerns about the behaviour of a train company, in dealing with claims that the TPI has submitted, it should raise these concerns with the train company in the first instance. If these issues are unresolved, the TPI may raise such concerns with ORR. ORR will take appropriate and proportionate action to resolve the issue, including use of licence enforcement powers if it considers it necessary.

144. The cause of dispute being raised should focus on the behaviour and practices of the TPI or train company in relation to delay repay claims processing only. Individual customer complaints regarding a train company's decision on their claim are already covered by the separate Rail Ombudsman scheme.

Consultation Questions

Q17. What are your general comments on the proposals, bearing in mind ORR's twin objectives to harness the potential benefits of greater TPI involvement whilst retaining important protections for passengers, train companies and taxpayers?

Q17 Answer: Tracsis understands the complexity of the problem, with differing objectives, sometimes opposing interested parties and stakeholders and agrees that at the core the passenger is key, and collectively the industry must not lose sight of this.

There is a potential conflict between standardisation and innovation and this needs to be considered and assessed as the increase in one could have a direct impact on the other.

We believe this consultation paper is the best placed opportunity to define the following:

- 1) Who is defined as the passenger?
- 2) Who is defined as the person entitled to the delay compensation?

These definitions are clear where the passenger who purchased the ticket is the same as the passenger travelling.

Where the travelling passenger did not purchase the ticket e.g. the ticket was purchased via a corporate card or TMC, then the separation of the travelling passenger and the ticket purchaser introduces confusion. This is not just an issue for business travel, but also for example when family and/or friends travel together, and one member has purchased all the rail tickets. Throughout this paper the passenger is consistently referred to and we believe it would be beneficial to clearly define who is the passenger, and who is entitled to the delay

compensation. This clarity would result in interested parties collaborating on how to ensure that the passenger is more aware, better informed and facilitate the process and ends the uncertainty and conflicting views within the industry of who is entitled to the delay compensation.

Further clarification around the role of the operator in establishing TPI compliance is required:

- When can TPI access be removed by an operator? Without further clarity, a potential scenario could manifest where an operator exercises an option to remove a TPI if only to present the TPI with additional workload to regain that approval.
- Differing operators and TPIs may have differing views of compliance if there are no specific requirements defined. This would lead to multiple levels of compliance having to be managed by both operators and TPIs leading to confusion and once more a lack of clarity and consistency.
- A Code that documents the required standards in detail which requires a TPI self-attestation of compliance, similar to PCI-DSS submitted to a single body, would have been preferable but we understand the effort required to manage this is not deemed to be proportionate or necessary at this time.
- Operators and TPIs need to collaborate to combat fraud. TPIs cannot comply with a statement such as 'TPIs shall have fraud detection/prevention capabilities not less than the operators' unless operators share those requirements and allow a specified amount of time to comply. Setting a bar such as this would not be reasonable as TPIs cannot comply with an unknown standard.

We believe that a working group of operators and TPIs (and other interested parties) should be established and the various elements of this topic at large be broken down and tackled by the subject matter experts in all elements.

Delay Repay system processes were initially aligned with the Train Operator's objectives to tackle two main and somewhat conflicting targets. These being:

- 1) improving claim automation for quicker and more accurate/consistent claim resolution decision, given the industry's drive to improve the passenger's uptake of the Railways compensation scheme
- 2) to reduce the Operator's average processing cost per claim so that they can be as efficient and as effective as possible with their staff resources in order to still be able to cope with the increased delay repay claim volumes.

With those objectives well advanced, and a continuous improvement process established with our Operator partners, the next level of efficiency saving, process effectiveness and problem solving the next level of issues can advance: this has focused our attention to tackling the varied fraud claim opportunities.

There are many facets of claim fraud given the current environment of separated Train Operating Companies, operating on a national rail infrastructure with open/flexible tickets and the multitude of ticket mediums from multitude of suppliers. The current situation is

both enhancing and delaying fraud protection as the initial detection is hindered by a lack of industry data sharing agreements which support the ease of investigating potentially fraudulent activity with other Operating Companies Delay Repay claims details. With the years of direct Delay Repay experience, existing system providers are well placed to tackle fraudulent activity as long as the industry doors are suitably open to facilitate required data sharing for detection and prevention. Therefore as part of the Code of Practice's 'Continual improvement' provision it would be advisable to get it mandated that data sharing agreements to allow suspected fraudulent activity to be shared from Train Operator to Train Operator in order to tackle this problem area head on in a formalised and collaborative way. This would be specific details regarding the delay repay claim, ticket and journey details and any ticket usage details on the network i.e. gate-line and validator readings at stations and on train ticket scans.

The people within the UK Rail Industry are world class and together we can achieve all that we aim for but we need to come together in the first instance and agree we are all on the same side, working for the same ultimate goals and remember that the passenger is core to everything we do.

Q18. What are your comments on specific substantive policy proposals with regards to the appropriate standards for TPI firms, as listed below

Transparency

Process

Evidence

Data quality

Payment method

Data protection

Q18 Answer: Tracsis has documented its thoughts and suggestions in **Comments 19 & 20**

Specifically, and additionally:

Process: Further details on the Rail Ombudsman's scheme should be made available to ensure the process to join is fair and proportionate.

Data quality: Comment: In order to reference a unique identifier across all three interested parties (passenger, TPI and operator) it would be necessary for the operator to clearly indicate the assigned claim reference number on the claim submission success page. This would allow any correspondence between any of the three parties to be specific and easily identifiable. It would also enable the TPI to make a call to the operator's systems via API to ascertain the status of the claim to present to the passenger.

Q19. What are your views on the proposed implementation regime, including the expectation that TPIs and train companies should work cooperatively to ensure compliance with the TPI Code, and the proposed mechanism for resolving disputes.

Q19 Answer: In order to ensure a fair but robust qualification/compliance process it will be important for a clear, standardised, concise frame work that all operators agree achieves the required standard else differing operators may have conflicting or different views of what constitutes compliance and the TPI could end up in a continual change status to achieve the next operators requirements.

Without this collaborative approach a passenger who travellers regularly on both London Northwestern Railways and Avanti West Coast and choses to use a TPI to submit claims could have their claims rejected by LRN but accepted by Avanti due to the individual Operator approval process. This would not be in the best interest of the passenger.

Q20. What, if any, further measures do you consider necessary and proportionate to achieve the objectives?

Q20 Answer: Tracsis has documented its thoughts and suggestions in this section and in Comments 19 & 20.

Trainline response - ORR consultation on improving access to delay compensation

28 August 2020



Executive Summary

We have structured our response to the ORR Consultation as follows:

1. In our introduction we describe the role of Trainline as an independent online ticket vendor and the role we play in information provision, journey planning, booking and post-sales support to customers;
2. We discuss the importance of Delay Repay and the role that TPIs can play in improving access and delivery to customers;
3. We set out our answers to the Consultation questions that relate to TPIs (set out in Consultation Annex D) including the draft TPI Code requirements for Transparency, Process, Evidence, Data Quality, Claim Status, Payment Method, Data Protection and the Rail Ombudsman;
4. We provide comments on the Draft TPI Code itself; and
5. Our confidential, commercially sensitive and non-public appendix, contains Trainline's Evidence Pack, process flows and high level customer experience.

1. Introduction

About Trainline

Trainline is the world's leading independent rail and coach travel platform.

We offer travel options from over 270 rail and coach companies. This includes all train operating companies in Britain and a large range of carriers in mainland Europe, from high-speed rail in Spain to coach travel in Hungary.

Our consumer-facing platforms record over 96 million visits per month, selling more than 350 tickets every minute, while 84% of visits are mobile. Trainline's B2B solution, T4B ("**Trainline for Business**"), helps over 30,000 companies to achieve their travel needs, while our Global API allows travel management companies, online booking agencies and online travel agents to integrate global rail in one simple connection.

Trainline's modern and agile platform

All B2B and B2C products are built on Trainline's proprietary, modern and agile platform. Trainline provides a comprehensive booking, information and post-sales service to its customers:

Pre-travel – finding journey options that match with the times and destination/origin parameters entered by the customer on the Trainline website/app; taking payment for bookings made, sending the travel ticket and associated information directly to the customer (typically by way of an electronic ticket sent to the customer's mobile device);

In-journey – providing customers with access to real-time information on arrival and departure times, platform information and other such 'live' information relevant to the journey; and

After-sales support – customers can obtain refunds or amend their journey directly via Trainline. This functionality is comprehensively provided to customers through Trainline's website/apps and customer support centre.

We provide a simple “one-click” user experience. This helps customers get the most appropriate ticket for their journey without having to navigate industry complexity. Our multi-carrier and modal journey planning system allows passengers in Europe to combine rail and coach, as well as services of different operators. On top of that, we provide added convenience through multi-product baskets and add-on travel services such as insurance.

Trainline understands the value and power of data. As we process up to 3 terabytes of data per day, deliver 135 billion search results and handle 1 billion train movements per year, we use bespoke AI-driven features to provide a personalised user experience and customer relationship management.

2. Trainline’s consumer focus and the importance of Delay Repay

Trainline is driven by a desire to respond to customer need. By introducing automated Delay Repay, we will be able to add more value to the customer’s experience, boosting the attractiveness of rail as a sustainable and customer-centric transport mode and benefitting the industry as a whole.

Trainline’s own customer research identifies appropriate recompense for delayed trains as the primary unmet customer need in rail. In February 2020, 76% of UK train travellers cited getting a refund in case of a delay or cancellation as important. A significant proportion of customers also felt that if they were to experience a delay or cancellation, they would use an automated process to obtain a refund.¹ It is also clear from the feedback we have received that customers remain poorly informed in respect of their Delay Repay entitlements and many customers are deterred from making a claim as a result.

Transport Focus customer research published in October 2018 confirms that only 35% of customers entitled to make a claim do so (this falls to 16% when the delay is between 15 and 29 minutes). Overall, this proportion of claimants has not changed since 2016 despite consistent calls from consumer groups (and DfT) for the industry to do better. In terms of claim process, the top two reasons customers cited for not claiming their delay repay entitlement were the amount of time it would take to complete a claim form and the complexity of the process.²

Trainline receives numerous contacts from customers each year who have had their journeys delayed. However, we cannot currently help customers who contact us regarding delayed trains – we must advise them to contact the Train Company they used. This seems illogical to us (and the customer); as a Retailer we are already required to offer full refunds to customers who abandon their journeys due to disruption (under the National Rail Conditions of Travel), and yet if their completed journey is delayed, we are unable to help them.

Trainline has been proposing to the Train Companies that customers should be allowed to submit Delay Repay claims to TOCs via Trainline for at least 5 years but we have been unable to gain industry agreement

¹ Insight Angels were instructed to conduct research on behalf of Trainline in February 2020, in a sample which included 2,500 UK residents who have travelled by train at least one time in the last six months.

² Survey Sampling International were instructed to conduct research on behalf of Transport Focus in March 2018, including a stratified random sample with targets set by age, gender and region to represent the total population of rail passengers and achieve around 4,000 completed interviews, together with a short questionnaire was asked to 500 passengers who had not experienced delays to understand their attitudes to current compensation policies and processes.

to do so. We therefore welcome the ORR's Consultation and the development of a Licence Condition that will compel Train Companies to work with us and other TPIs.

Ultimately Trainline would like to be able to award Delay Repay to customers directly. We welcome the ORR's proposals to enable customers to submit Delay Repay claims to TOCs via TPIs such as Trainline but, in time, and once Train Companies are confident TPIs can accurately process eligible claims, we believe it would be more efficient to allow TPIs to self-process claims, saving Train Companies (and customers) time, cost and effort in the process. If Trainline was permitted to award Delay Repay directly, we would expect a high degree of process automation could reduce the handling time to a few days (or even less). Moreover, we believe we would save the industry money; based on our knowledge of contact centre activities we estimate the handling cost of 3 million Delay Repay claims to be in the region of £30m; this could be significantly reduced.

Finally, it is worth saying that as a TPI, Trainline recognises that there are certain types of customer service needs that are offered by Train Companies that it is not appropriate for TPIs to offer, such as issues relating to the onboard experience. By improving delay replay processes, we are simply trying to make it easier for the Train Companies to enable customers to claim their delay repay entitlement. This is the industry problem statement we seek to solve. If customers have complex queries about specific aspects of their journey/on-board experience that need a detailed response they are likely to be better served by contacting Train Companies directly and where this is the case, we would expect to inform and direct customers accordingly.

3. Trainline responses to relevant consultation questions

Third Party Intermediaries

Q17. What are your general comments on what is proposed, bearing in mind ORR's twin objectives to harness the potential benefits of greater TPI involvement whilst retaining important protections for passengers and taxpayers?

Trainline welcomes the proposals for increasing the involvement of TPIs in the Delay Repay process. As ORR suggests, TPIs can play a positive and important role in bringing innovative and consumer friendly services to the market. This is entirely consistent with the role that TPRs play in the rail retailing landscape more broadly, and Trainline specifically.

Trainline is proud of its longstanding reputation in providing industry leading digital services to customers. We have consistently led innovation in rail, from the first meaningful implementations of mobile ticketing, to Best Fare Finder and Price Prediction, the bringing of Split Ticketing to the mainstream and utilities such as Crowd Alerts. We believe that Delay Repay, performed more effectively than now, could be a generative activity, rather than a cost overhead. Adequate recompense, delivered swiftly, will build trust, credibility and confidence and do much to encourage customers to return.

With regard to Delay Repay we agree that there is a significant opportunity for TPIs to add value by alerting passengers when they may be entitled to compensation and by simplifying the claims process.

Retailers are well-placed to support customers in claiming their Delay Repay entitlement from Train Companies. We think of this as being a normal and natural role in many retailing contexts; if a customer has

a problem with the service they have received, they generally return to the point of purchase in the first instance.

Importantly, Retailers hold all the available information to support a swift and effective Delay Repay claim, as they:

- possess the customer's contact details and payment information;
- hold the details of the customer's booking and the evidence data that supports the claim being made by the customer – including the train being booked, the reservation held and the scan data generated when a ticket is inspected;
- are uniquely positioned to support the customer with their Delay Repay claim, with an existing relationship, customer familiarity with the TPR app / website and stored customer and payment data and
- may access open source real time train information (available from Network Rail) in relation to train delays and this can be used to readily match customers to delayed trains.

By allowing TPIs to participate in Delay Repay claiming, TPIs can bring important benefits to the wider passenger and taxpayer policy landscape. We think of this in three ways in particular:

- It is a longstanding DfT policy objective that Delay Repay claim rates should improve, but despite industry efforts, they have largely failed to do so in the last five years. By improving awareness of claim eligibility and by simplifying the claim process itself Trainline is confident that it will raise consumer awareness and claim levels overall.
- We set out below our proposals for ensuring that claim eligibility is identified with a high degree of precision. This will ensure that Trainline only sends Train Companies legitimate claims. This in turn will reduce the amount of claims that get rejected which will save Train Companies money (by not processing claims that are never paid). By Trainline standardising claim submission for a significant proportion of their claims, Train Companies will benefit from simplified claim handling and resultant cost saving.
- Ensuring that we only submit claims that are legitimate, including by implementing processes to detect and prevent fraud, which we have set out in detail in the process section below, also reduces the risk that Train Companies have of paying out on claims that should not be.

Finally, it is worth noting that we do not advocate so-called '*automatic*' Delay Repay; what we are proposing is that it should be '*automated*'. Customers should be required to take a positive step to make a claim, rather than have all or part of their fare returned to them without action or explanation. This enables identifiable customer value to be attached to Delay Repay, together with a layer of fraud prevention, for the benefit of Train Companies and TPIs.

Q18. What are your comments on specific substantive policy proposals with regards to the appropriate standards for TPI firms, as listed below (N.B. the list of sub-headings come from the Annex D list of questions)

Transparency

The consultation document references the need for transparency, especially around fees. We understand the concerns in this area. The ability to charge fees is important, because TPIs need to generate an income stream that enables them to fund investment in the products and services they create (retail commission only covers operating costs). There is nothing new about this principle. Customers always have a choice and it is up to them whether they wish to pay a service fee, or not. We expect that a significant proportion of customers who do not claim because it is hard work to do so, will gladly accept a modest fee in exchange for that effort being borne for them. They are always able to go directly to a Train Company (and not be charged a fee) if that is what they prefer to do.

However, if fees are to be charged then of course that must be clearly stated up front. Trainline proposes to not only tell customers what fee they would be charged (for example, as a percentage) but also say what that means in monetary terms so customers can assess the value of the fee in the context of the compensation they are likely to receive.

We do not think it appropriate, at point of claim, to advise customers that they can claim free of charge if they go to the Train Company directly. Trainline is offering an enhanced service to the customer making it easier to claim compensation in a manner not offered by the Train Companies.

Process

ORR offers views about process in a number of distinct areas. We set them out separately for clarity and give our view in each case. This is an important part of the proposals and it is probably helpful to share some broad context.

Trainline recognises and accepts that handling DR claims will bring responsibilities towards customers and also Train Companies. It is essential TPIs ensure, to the greatest extent possible, they only generate **legitimate** Delay Repay claims for submission to Train Companies. TPIs have a direct interest in doing so; it helps no one (Train Company, customer, or TPI) if spurious or marginal claims are generated - which would then result in claims being declined, customers being let down and TPIs suffering reputational harm.

Secondly, it is important to be clear that we are not advocating possible attempts to maximise revenue through 'claim suggestion' to customers whereby lists of delayed trains are shared with potentially eligible customers to tempt them to make a claim. This is not the aim of greater access to Delay Repay and will discredit the process. We will, however, notify customers where we reasonably believe we can identify the train the customer has travelled on.

There are two customer use cases we believe TPIs can support:

1. where a customer purchasing a ticket from a Retailer is subsequently alerted to their likely eligibility for Delay Repay. Trainline believes that a number of different data items can conclusively (or substantially) indicate a customer travelled on a given train. In these cases, it is right (and in support of ORR and DfT objectives) that customers are alerted by the Retailer accordingly; and
2. where a customer purchasing a ticket from a Retailer (but who is not alerted) seeks help from that Retailer to subsequently make a claim where they themselves have identified they are entitled to do so.

Trainline believes there is an opportunity to work with Train Companies to improve overall process efficiency in claim submission. Today, before a Train Company can process any Delay Repay claim, they must do a significant amount of pre-work to check the validity of any claim (verifying that the train the customer claims to have travelled on was late, as a minimum, as well as check for any suspicious patterns of activity).

We have already set out proposals to the industry in this area which would involve Trainline effectively doing this work for them. Trainline proposes creating an 'Evidence Pack' which provides all the information a Train Company would need to process a claim (for example, train, ticket type and price) and the available supporting information indicating that the customer did in fact travel on the train for which they are making a claim. We discuss the Evidence Pack below.

- i. TPIs shall take reasonable steps to ensure that the claims which they facilitate are legitimate claims for journeys that the passenger has attempted to make.*

We understand and accept this obligation. However, it is worth restating that currently the lowest common denominator evidence bar required by Train Companies to accept a Delay Repay claim is generally quite low; it only requires a valid ticket and an assertion by the customer that they were travelling on a specific train. There are often no tools available to Train Companies to substantiate the claim being made.

For some tickets this is relatively simple; for example, Advance products compel the customer to travel on a certain train on a specific date. There is no ambiguity here (unless train service disruption has resulted in the customer boarding a different train). We discuss the Issues with flexible tickets below.

Trainline is happy to work with the industry to improve industry capabilities in this area with a view to improving standards of accuracy and probity. For example, when submitting a claim to a TOC Trainline will use an artefact we term the 'Evidence Pack' which shares with the Train Company the information we hold about the customer's journey and the basis by which we facilitate their Delay Repay claim. However, clearly there must be an industry standard set of eligibility criteria that apply to all participants in the market.

- ii. Monitoring for duplicate claims, unfeasible patterns of travel, unlikely volumes of claims*

Trainline has extensive fraud detection and prevention capabilities, developed over many years. We consider this to be an industry-leading part of what we do. We already put significant resources into monitoring patterns of refund behaviour and intervening to warn customers (or ultimately block them from booking again). It is an area of competence we seek to continually develop; for example, in future we will structurally prevent customers from claiming refunds if we believe they are doing so falsely.

The same is true of Delay Repay. Insofar as Trainline will be alerting customers about their claim eligibility we (obviously) will not process more than one claim for the same ticket. We have considered the possibility

that unscrupulous customers may try to make a duplicate claim from the Train Company as well as via Trainline. Existing industry processes give adequate protection here; Train Company Customer Relations teams already check for duplicates in their existing processing. Any claim received by a Train Company (whether directly or via a TPI will have unique data items (for example, ticket number) associated with it, and enable simple detection of duplicate claims. Moreover, all ticket numbers have a prefix that identifies their origin (for example, Trainline is 'TT') so it will be obvious to agents processing claims where a ticket has come from.

The onus is on TPIs and Train Companies to work together to manage the risk of duplicate claims accordingly.

iii. Respond to TOC enquiries and demonstrate reasonable co-operation

TPIs (as Retailers) already co-operate extensively with Train Companies (for example, in respect of fraudulent ticket purchase or refund behaviour) and we would expect this to develop in the sphere of Delay Repay. At a simple level, if any Train Company wanted to verify whether any given ticket was the subject of a Trainline-initiated claim then we are happy to explore automated solutions, for example an API or report, to confirm that.

iv. Standardisation of forms and facilitation of automation

In para 128 (p. 31-32) of the Consultation document ORR discusses the need '*for Train Companies to take appropriate steps to enable compliant TPIs to facilitate the automation of claiming by passengers*' and we note that ORR has not sought to be prescriptive about how this is done. We agree that this is the right approach, noting that the principle must apply both ways. Trainline will use a standardised form of claim submission to the Train Companies (our 'Evidence Pack') which we have developed using our understanding of all the existing Train Companies claim processes. We have offered to amend our Evidence Pack to accommodate reasonable requirements if it is helpful.

In an industry where Train Companies and TPIs are required to work together, this will place responsibilities on Train Companies to ensure that firstly, their own processes are working effectively and secondly, that they should not change processes (for example, forms) unilaterally (because of the downstream impact that will have). In our experience small changes made by some Train Companies to the code in their web forms have disrupted code that Trainline has written to semi-automate the process of filling in compensation claims. There's no suggestion that any of these incidents are intentionally disruptive, but it concerns us that this is a weak link in the chain of events required to make Delay Repay operate smoothly.

In their acceptance of obligations under the Code of Practice we would like to see Train Companies agree to common practices that support automation. For example: we don't expect Train Companies to block more than 'X' submissions from one IP address, or 'user', per day and there should not be any requirement for Delay Repay claimants to create a user account with the Train Company to make their claim via a TPI. Clearly, there should be no practices (whether deliberate or otherwise) that thwarts automation of claim submission by TPIs. Any such practices could temporarily result in Trainline being unable to submit customer claims within 3 working days.

In addition, we would also like to see Train Companies agree to a common format for their responses to TPI submitted claims to enable further automation. We have been unable to automate the processing of a significant number of Train Companies delay repay confirmation emails and approval emails as they have no specific identifier to enable us to determine the type of email or are sent in a format that stops us being

able to export the information needed. The difficulty in automating these processes, or any changes to current formats that could break our automation would impact our ability to notify the customer of Train Company responses within 3 working days specified in the draft code.

Positive engagement might include notification of upcoming changes to the Train Companies form or evidence requirements, or collaboration regarding submission via API (which ORR notes in para 129). Trainline would welcome a discussion with the industry about how this should be done but we note that we would be unhappy if, for example, such direction resulted in unnecessarily-heavyweight and costly centralised systems to process claims. Trainline is open to discussing with Train Companies any process whereby the efficient processing of claims is enhanced. However, this requires a degree of co-ordination (it cannot result in many versions of the same process) and it requires agreement between Train Companies and TPIs on how to proceed in this area. While we agree that ORR's approach here should not be prescriptive Train Companies (again) will need to respond in a timely way.

Evidence

Clearly, there must be an industry standard test for eligibility. However, Trainline is happy to work with the industry to help improve the quality of evidence that may be necessary for a claim to be legitimate. Trainline is developing a Trainline 'Evidence Pack' which will package the relevant evidence and provide this to TOCs in the manner described below.

Trainline Evidence Pack

The Evidence Pack would be a standardised form of evidence submission containing one or more proof points indicating that a customer was on a delayed train. The Evidence Pack would also assist Train Companies in effective claim handling because every claim will be presented in an identical format. We have asked for feedback from Train Companies on how to make this as useful as possible to them. In the future, this will enable increasing levels of automation.

It is worth highlighting that the available evidence bar could differ considerably for Advance tickets (which commit the customer to a specific train on a specific date) than for Flexible tickets (Including season tickets) (often any train within a given period of validity).

i) Advance tickets

From the outset, the Trainline Evidence Pack would include:

- A self-certification statement from the customer making the assertion that the claim being made is accurate and legitimate (including notice that fraudulent claims may result in criminal prosecution) and for the train that was travelled on; and
- Ticket data confirming the train that the customer was booked on is the same one that the claim is being made for.

In future, the Trainline Evidence Pack could potentially also include items such as a scan record from on board ticket inspection

However, clearly there must be an industry standard set of eligibility criteria that apply to all participants in the market.

ii) Flexible tickets (including season tickets)

From the outset, the Trainline Evidence pack would include:

- A self-certification statement from the customer making the assertion that the claim being made is accurate and legitimate (including notice that fraudulent claims may result in criminal prosecution) and for the train that was travelled on and
- Ticket data confirming the ticket the customer purchased is valid for the train that the claim is being made for.

In future, the Trainline Evidence Pack could then potentially include a range of available data sources that individually or in combination help identify the train the customer is travelling on. These can include industry-available data such as seat reservation or scan record but could also draw upon data sets that are created by the way customers interact with the Trainline app on their mobile device

Available data is likely to include:

- flexible customer with reservation: is claim for reserved train?
- flexible (no reservation): is claim for train customer selected when making booking?
- on Board scan record with train identifier?
- gateline scan record consistent with the departure time at the origin station or the arrival time at terminating station?
- GPS location identifier: consistent with date/time/location of train being claimed?
- Data from app interaction

However, as per Advance Purchase tickets, clearly there must be an industry standard set of eligibility criteria that apply to all participants in the market.

For all types of tickets, Trainline is willing to work with the industry to help develop eligibility criteria for the future whilst always being mindful of striking the right balance between probity/fraud protection and customer's legitimate expectations around data privacy.

Finally, we feel it is imperative that the initial set of industry-standard eligibility criteria is set out in the code so that there is no ambiguity or subjectivity as to what evidence is needed to constitute a valid claim. Without this clarity, there is a real risk of differing standards resulting in confusion and, ultimately, consumer harm. Trainline's Evidence Pack, as described above and further illustrated in the confidential appendix, will, from day 1, include the evidence currently accepted by Train Companies as legitimate for a delay repay claim. We would therefore expect that this remains the baseline industry-standard eligibility criteria. As we have said above, we believe there could, in future, be additional data points included within the Evidence Pack that further improve the quality of claims, which strikes a reasonable balance between customer privacy and the need for fraud identification and prevention. Trainline is happy to work with the industry in developing such improvements, but that does not dilute the imperative for the initial industry-standard acceptance criteria to be specified in the code.

Data quality

We have set out above our approach to Evidence submission. Within this, our self-set expectation that we will supply high quality claims to Train Companies is, we believe, clear. However, Trainline would not expect to be held to a higher bar of evidence than is generally the code standard.

Payment Method

There are two aspects of Payment Method to consider:

- Payment by the Train Company back to the TPI enabling the customer's claim
- Payment by the TPI back to the customer

i. Payment from Train Company to TPI

Train Companies will need to pay TPIs in an agreed way. This needs to be by bank transfer, using the claim reference given by the TPI as part of the original claim submission. It is important that these two principles are agreed and clearly understood. We note (and welcome) that the Draft Delay Compensation Code of Practice for Licence Holders (Provision 5e (iii)) sets out that 'communications and payments must be made via the TPI where the TPI informs the licence holder that the passenger has consented to this'. The Train Company *must* pay the TPI so that TPIs do not have to share the payment details with a third party (complex, undesirable and ultimately unnecessary from a data privacy, security and anti-money laundering perspective). Finally, it is likely to be easier for Train Companies to scale and automate if bank transfer is the default approach.

ii. Payment from TPI to Customer

Where a TPI is also a Retailer our clear expectation is that the Delay Repay payment is returned to the Customer's original method of payment. Indeed this is one of the primary benefits of enabling Retailers to become TPIs; the joining of customer, journey and payment details enables a simple and elegant claim process for Customers.

We know that Train Companies have expressed concerns that they have obligations to offer customers multiple methods of Delay Repay payment and the same should be true for TPIs. We disagree; their context is very different. Given that most Train Companies ticket sales still take place in a station environment there is no way for Train Companies to know how the original ticket was purchased, or of joining the Delay Repay claim to the original payment method. Furthermore, that payment method may well have been cash. Therefore, it is right in these circumstances that Train Companies should offer customers a choice of payment method.

For a Retailer acting as a TPI, the payment method and details are always known. A successful claim can be swiftly returned to the customer, without the need for them to separately specify payment details (again, complex and undesirable from a data privacy perspective) or be sent a cheque they have to cash. Therefore, the service that Trainline proposes to offer will only return payment to the original payment method (again, as is normal in other retail contexts). If (for some reason) the customer wishes a different method of payment then they are free to go to the Train Company directly.

We support the principle that claims being handled between TPIs and Train Companies must be able to be tracked correctly. We welcome the concept of a standard reference protocol that enables TPIs, Train Companies and passengers to verify claim and payment. We have experience of this in our own operations, where every claim possesses a unique Train Company claim reference number for this purpose. However, these Train Company claim reference numbers are all in different formats and vary in length, with some being up to 20 characters long. As a result, in many cases the payments we have received either truncate the claim reference, as the bank ledgers do not support references that length, send a different reference or omit it completely, which in all cases, renders the reference useless and makes reconciliation back to the affected customer difficult or impossible. If the Train Companies used our 14 character reference these issues would all be solved. This is an area where it will be vital for Train Companies and TPRs to collaborate.

We don't agree that it necessarily follows that the Train Companies need to all adopt a 'standard reference protocol'. While this may be helpful, it will need to be approached thoughtfully because immediately asking all TPIs and all Train Companies to agree a standard before any claims can be handled under the Code is probably unrealistic. All that needs to happen here is for TPIs to use their own claim reference and for Train Companies to respond to it. If a standard reference protocol needs to be created then we would prefer it was developed as part of the ongoing work of the ORR Steering Committee so that all stakeholders have an opportunity to give their views.

Data protection

Trainline considers the protection and privacy of our customer's data as fundamental to the service we offer and the obligation to comply with the relevant data protection regulations, notably the GDPR, is clear and unambiguous.

By implementing Delay Repay in the way we have described in the Evidence and Payment Method sections above, we have sought to implement a process that incorporates data protection by design, and by default. This means we have deliberately designed processes which minimise both the sensitivity and amount of personal data which is collected and provided to Train Companies, to reduce the risks to our customers, whilst still providing an automated Delay Repay service.

In particular, we do not propose sharing customer names or addresses with Train Companies, but instead we will use a unique customer identifier. In addition, we will not be sharing customer payment card details with Train Companies (where, at Trainline, we have maintained Level 1 PCI DSS accreditation, as a payment merchant since 2013), and instead, intend to repay customers their Delay Repay entitlement directly. In these ways, we are protecting sensitive customer personal data.

In addition, as part of our Delay Repay customer experience and in line with GDPR, we will seek customer consent before sending any personal data to the Train Companies.

Rail Ombudsman

In principle we have no objection to being included in the Rail Ombudsman's scheme for customer complaints. We will need to understand the practical implications of this requirement; when this was previously tabled by RDG the proposals had been principally drafted to reflect the role that the Rail Ombudsman needed to play in respect of complaints against Train Companies, rather than in respect of

complaints against TPRs. The associated costs of joining the scheme appeared onerous to Retailers and the matter was not progressed.

We can see that a workable solution could be some form of Associate Membership status or compliance with the TPI Code meaning TPIs would be bound by the Ombudsman in some way. We are happy to discuss further.

Q19. What are your views on the proposed implementation regime, including the expectation that TPIs and licence holders should work cooperatively to ensure compliance with the Code, and the proposed mechanism for resolving disputes?

Trainline is supportive of the principle that TPIs and Licence Holders should work co-operatively to ensure compliance with the Code and the mechanism for resolving disputes. This is always Trainline's preferred approach to working with the industry and one we have tried to demonstrate as we have made our proposals for TPI involvement in Delay Repay (for example, by offering all Train Companies the opportunity to test the quality of our data being used to generate eligible claims, and by asking them what fields they would expect to see included in our Evidence Pack).

We are supportive provided that the Train Companies also engage with the proposals in the right spirit and in particular, accept the need for the 'certainty...and timely and robust decisions' to which ORR refers. However, the proposals ORR is making in respect of TPI participation are not ones with which many Train Companies are naturally aligned. With a few notable exceptions (and we would like to acknowledge the support of Arriva, Abellio and LNER), Train Company response has generally been a reluctance to meaningfully engage and our view is that some will not willingly work with TPIs until they are forced to by the creation of the Licence Condition.

Trainline will be happy to make the case that its process is Code-compliant; we will do so using the Transparency, Process, Evidence and Data Quality principles of our approach that we have described above. We will welcome feedback from Train Companies (as we have offered to do already). However, if Train Company agreement is not reasonably forthcoming (and in a timely way) we may need to seek ORR support in determining Code-compliance as referred to in Para 138.

Compliance and Steering Committee

Trainline welcomes the proposal for a Steering Committee in which Train Companies, TPIs, ORR and Passenger Groups work together to review the effectiveness of the TPI Code. It is significant because Trainline has been calling for the creation of a forum in which interested Third Parties can have a voice in industry developments for many years.

We welcome the aspiration of the Steering Committee to share innovation and customer experience improvement. We suggest that, in the early phases of operation of the Code, that the Committee meets more frequently than annually; there is likely to be much early clarification and co-ordination required.

Q20. What, if any, further measures do you consider necessary and proportionate to achieve the objectives?

For the avoidance of doubt, Trainline wishes to begin submitting (TPI Code-compliant) claims to Train Companies as soon as the Code is published. We therefore ask that when ORR sets out its Consultation findings it is explicit that once the TPI Code has effect once it is published, and that Train Companies should expect to deal with claims made to a standard that is consistent and compliant with the Code, *even prior to the creation of the Licence Condition*. This is reflective of the obligations Train Companies already hold in relation to general competition law and consumer law and to which ORR refers.

In a context where increasing numbers of customers are now returning to travel following the coronavirus outbreak, we believe that rapidly introducing automated Delay Repay, will add significant value to customer experience, boosting their confidence in rail, benefitting the industry as a whole and enabling it to recover more quickly.

Drafting

Q21. Do you have any proposed amendments to improve the drafting and clarity of the licence condition, delay compensation code of practice, or TPI code?

Where we have comments, we set those out on the draft TPI Code below, within italicised square brackets. These comments should also be read alongside our fuller narrative response to the questions above.

4. ORR Consultation Document Annex C: Draft TPI Code

Overview

- a. This delay compensation Third Party Intermediary Code of Conduct ('TPI Code') establishes a set of standards for the conduct of Third Party Intermediary companies ("TPIs") who facilitate passenger claims for delay compensation from licence holders.
- b. The TPI Code establishes agreed standards for TPIs: how they provide their services to customers and how they interact with licence holders. It is linked to other documents, in particular the licence condition on delay compensation, and associated Code of Practice (CoP) for licence holders.
- c. Under the conditions of their licence, and the associated delay compensation Code of Practice, licence holders must process claims received via Third Party Intermediaries (TPIs), provided they can demonstrate their suitability through compliance with the provisions of this TPI Code.
- d. The content of this TPI Code does not affect a licence holder's existing obligations with regards to delay compensation, as set out in contracts, passenger charters, or the National Rail Conditions of Travel. Nor does it affect a TPI's or train company's responsibilities under general consumer law, such as the Consumer Protection from Unfair Trading Regulations 2008, or Consumer Rights Act 2015, competition law, or other relevant legislation including relevant data protection law.

Definitions:

- **Claim:** a request, initiated by a passenger, and submitted either directly by the passenger or via a Third Party Intermediary, for the delay compensation to which they may be entitled under the conditions of the licence holder's Delay Compensation Scheme. A claim for delay compensation is distinct from a complaint, or refund application, that passengers may make about other aspects of their journey.
- **Delay compensation scheme:** a scheme designed to compensate travelling passengers for delay on their journey (above a given threshold). Each licence holder will have a delay compensation scheme, setting out the relevant entitlements, eligibility requirements and claim processes for passenger delay compensation on their services. This may take the form of a uniform 'delay repay' scheme such as DR15 or DR30, or bespoke 'passenger charter' arrangements. Details of a licence holder's delay compensation scheme must be made available to passengers. In accordance with the licence condition on compensation
- **Licence Holder:** For the purposes of this TPI Code, a passenger train operator with a passenger licence and a Statement of National Regulatory Provisions that includes Condition 13. Licence holder obligations with regards to TPI firms are set out in the accompanying delay compensation code of practice (CoP) - Passenger – for the purposes of this code, and in accordance with the purpose of delay compensation as set out in contracts and passenger charters, the passenger is the ticket-holding traveller, who will be entitled to appropriate delay compensation for a delay that they have experienced. A claim must be initiated by a passenger.
- **Third Party Intermediary (TPI):** An entity that facilitates passenger claims for delay compensation, typically either by alerting a passenger to their potential eligibility and / or submitting a claim for delay compensation on behalf of a passenger. Such bodies who act as TPIs whilst also providing other services for passengers, such as ticket retailing, are nonetheless considered as TPIs for the purpose of this code and are required to comply with its requirements.

Provision 1: Transparency

Purpose: to ensure TPI customers receive clear information.

- a. TPIs must provide relevant information to their customers, in a reasonably prominent fashion, to include the following:
 - i. Clear information about process and timescales for submitting claims, to include guidance on eligibility, entitlements, and requirements for evidence of travel.
 - ii. Clear information on fees charged by the TPI, for example for membership or commission.
 - iii. Where a subscription model is in place, clear information on the payment timings and how this subscription can be cancelled.
 - iv. Clear acknowledgement that fraudulent or duplicate claims will not be accepted by licence holders, and may constitute fraud, and that licence holders and TPIs will cooperate in monitoring for such claims, including those that have been submitted via more than one channel.
 - v. Clear acknowledgement that passengers can, if they wish, choose to submit a claim directly to licence holders, free of charge.

[We do not think it appropriate, at point of claim, to advise customers that they can claim free of charge if they go to the Train Company directly. TPIs like Trainline are offering an enhanced service to the customer making it easier to claim compensation in a manner not offered by the Train Companies.]

- vi. Information about how a passenger can contest a claim outcome made by the licence holder via the Ombudsman.
- vii. Information about a passengers' statutory rights against licence holders, including those beyond the scope of delay compensation schemes.

Provision 2: Process and timings

Purpose: To ensure timely and accurate claim processes

- a. TPIs will submit a (correctly completed) claim to the licence holder within 3 working days of the passenger initiating the claim.

[TPIs obligations here should be expressed to be subject to Train Companies providing adequate processes (i.e. automation) in the manner we describe above.]

- b. TPIs will communicate a licence holder's decision on the claim to the passenger within 3 working days of receiving the licence holder's decision.

[TPIs will use reasonable endeavours to achieve these timescales but It should not be an absolute requirement. Furthermore, TPIs obligations here should be expressed to be subject to Train Companies supplying the relevant data and providing adequate processes (i.e. automation) in the manner we describe above.]

- c. Any time taken by the TPI to process the passenger's claim will not be included within the licence holder's deadline, as set out in the CoP.
- d. TPIs will make provision for passengers to enquire about the status of their claim, and where appropriate make enquiries to licence holders on the passenger's behalf.
- e. TPIs shall cooperate with licence holders to facilitate smooth and timely processing of claims. This shall include steps to ensure that claims and evidence are submitted in a format and method that facilitates necessary checks and processing.
- f. TPIs will not facilitate fraudulent or duplicate claims. TPIs shall take reasonable steps to ensure that the claims that they facilitate are legitimate claims for journeys that the passenger has attempted to make. This will include monitoring for duplicate claims, unfeasible patterns of travel, or unlikely volumes of claims. TPIs should be able to demonstrate sufficient processes or procedures enabling them to undertake this task.
- g. TPIs will cooperate with licence holders and, as appropriate, other TPIs to ensure that information about duplicate claims or suspicious behaviour is shared.

Provision 3: Evidence and data

- a. TPIs will make clear the accepted forms of ticket evidence to the passenger, and will ensure that claims include appropriate evidence that a passenger was on, or attempted to travel on, a delayed or cancelled train.

[We feel it is very important that the code sets out the initial baseline evidence/eligibility criteria for advance purchase and flexible (Including season) tickets. Trainline's Evidence Pack as described above and further illustrated in the confidential appendix will, from day 1, include the evidence currently accepted by TOCs as legitimate for a delay repay claim. We believe there could, in future, be additional data points Included within the Evidence Pack that further Improve the quality of claims, and Trainline is happy to work with the Industry in developing such improvements.

However, clearly there must be an industry standard set of eligibility criteria that apply to all participants in the market and it is vital that such Initial set of eligibility criteria is set out in the code so that there is no ambiguity or subjectivity as to what evidence is needed to constitute a valid claim. Without this clarity, there is a real risk of differing standards resulting in confusion and, ultimately, consumer harm.

If the code itself does not set out the baseline evidence/eligibility then it should form an early subject for the Steering Committee to discuss, agree and conclude.]

- b. TPIs will ensure that submitted claims include clear and specific confirmation from the passenger that they travelled, or attempted to travel, on the delayed or cancelled service, and that the passenger has not submitted a claim via other channels.
- c. TPIs and licence holders must comply with the relevant requirements of data protection legislation.

Provision 4: Payment Method

- a. TPIs will specify to the licence holder any preferred payment method requested by the passenger, in line with the options available. To ensure that claims can be tracked correctly, TPIs will use a standard reference protocol to enable TPIs, licence holders and passengers to verify claim and payment. TPIs may hold funds on behalf of passengers, provided

[Where a TPI is also a retailer, delay repay compensation should be returned to the Customer's original method of payment. Not only is this an elegant customer experience, it is also favourable from a data privacy, security and anti-money laundering perspective.]

- i. Accounts containing passenger money are held separate from business accounts;
- ii. Passenger money accounts are protected adequately from the risk of business failure;
- iii. Due payments into passenger accounts are made promptly (and in any event no longer than 3 working days) unless passengers expressly consent, having been fully informed of any applicable risks, for their funds to be held in an account with the TPI.

[Whilst we do not disagree with these requirements in principle, we would like to understand how the ORR sees these requirements working in practice. TPIs obligations here should be expressed to be subject to Train Companies supplying the relevant data and providing adequate processes (i.e. automation) in the manner we describe above]

Provision 5: Implementation framework

- a. ORR will maintain and publish this TPI code. Licence holders must process claims submitted via TPis that meet the requirements of this code.
- b. ORR will convene a stakeholder panel, comprising representatives from licence holders, TPis and passenger interest groups. This group will meet at least once a year, and will review the ongoing efficacy of the TPI Code and make suggestions for how it could be improved.

[We believe this should be more frequent, at least bi-annual but preferably quarterly in the 1st year]

- c. Both licence holder and TPI must engage constructively with each other to ensure, so far as possible, the smooth and efficient processing of legitimate passenger claims, and the payment of delay compensation to the passenger.
- d. Where licence holders identify problems with a claim or claims received via a TPI, including claims that may be duplicate or fraudulent, they must raise this issue with the relevant TPI (or TPis). Where TPis identify issues with a licence holder's handling of a claim, in accordance with the requirements of the CoP, then they must raise these issues with the licence holder in question.
- e. Both licence holder and TPI must engage constructively to help identify and resolve any issues or questions of non-compliance with this TPI Code or the associated CoP for train companies.
- f. Where a licence holder is of the view that a TPI is not compliant with the provisions of the TPI Code, and attempts to address this via engagement have not been successful, then they may decide to stop accepting claims submitted via that TPI. The TPI may then decide to register a complaint with ORR about the licence holder's compliance with its obligations under the CoP. ORR will consider such cases on their merits.

Transport Focus and London TravelWatch response to ORR consultation on improving access to delay compensation

Transport Focus is an independent consumer organisation – a champion for the transport user. Our mission is to make a difference for transport users and to make transport services better. We gather evidence, especially research with transport users, and use this evidence to drive change and make a difference. We aim to be useful to those who make decisions about transport and to help them make better decisions for the user.

London TravelWatch is the official watchdog representing the interests of transport users in and around London. Independent of transport operators and government, London TravelWatch is sponsored and funded by the London Assembly, part of the Greater London Authority. Our aim is to press in all that we do for a better travel experience for all those living, working or visiting London and its surrounding region.

We welcome the opportunity to respond to the Office of Rail and Road's consultation on improving access to delay compensation. Transport Focus has been campaigning for improvements to passenger compensation. The ['Make Delay Pay'](#) campaign aims to raise passenger awareness of compensation for delayed and cancelled train journeys, persuade more rail users to claim what they are entitled to and ensure train operators streamline the claims process through easier online and automated systems. We are pleased that many of our recommendations are addressed by the consultation. These proposals for a licence condition on delay compensation and the requirement for train companies to comply with a delay compensation code of practice are a welcome step. In time they should help to improve passengers' awareness of delay compensation and their experience of claiming.

We have addressed the majority of the consultation questions in turn directly, highlighting parts of the proposals which we are particularly supportive of and areas where we believe it would be proportionate and beneficial for passengers for the proposals to go further.

Q2. Should open access and concession operators (as well as franchise holders) be subject to the proposed licence condition? Should it apply to other holders of a passenger SNRP?

We have no evidence to suggest passengers' needs and expectations in terms of compensation are affected by the operating arrangements of a train company, whether concession, franchise, or open access. Few passengers are aware of these differences. Applying the proposed license condition to all operators should help to promote standardisation in the experience of claiming compensation for passengers. Many passengers make journeys involving travel with multiple train companies. These passengers should be able to expect the same minimum standards regardless of which leg of their journey is delayed and whichever train company they contact to claim compensation.

Awareness

Q4. Do the requirements and drafting for the provision of information provide sufficient clarity and assurance for train companies and passengers?

a) online

Direct link on homepage

We welcome the requirement for a direct link to the delay compensation claim process on the homepage of train company websites.

In our report [Make Delay Pay: improving compensation for rail passengers](#) (February 2020), we noted that 10 of 19 train company websites audited in December 2019 had a prominent message on website homepage, including the minimum qualifying delay length. Some train companies took a more minimalist approach, requiring the passenger to have some prior knowledge of what Delay Repay is and to locate the right website menu in order to access the Delay Repay page. We recommended train companies must use their website homepage to raise awareness of Delay Repay, including the minimum qualifying delay length.

Paragraph 70 of the proposals notes:

'Research conducted by Transport Focus shows that most train companies now have a prominent link on their website homepage for delay compensation information. Therefore, we do not consider that enshrining this baseline within the CoP will be a burden on train companies, and will bring those companies who do not currently provide this information prominently up to the same standard.'

We agree and are pleased to see our campaign recommendation reflected in the proposals, which should help to bring all train companies' websites up to the standard already met by the majority. We welcome in particular the requirement in the code of practice that this information is 'displayed clearly and prominently'. A direct link on the homepage alone cannot be effective in raising awareness. It needs to be sufficiently prominent and supported by important details such as the qualifying delay length to raise awareness for those without prior knowledge of schemes such as Delay Repay or the 15-minute delay threshold for Delay Repay 15.

Guidance for passengers

Most claims for delays are straightforward, but some are much more complicated and require a bit of guidance. In our report [Make Delay Pay: improving compensation for rail passengers](#) (February 2020) we found little (if any) guidance on what to do in the following scenarios – all are real issues that we have encountered through our complaints postbag or which were raised by people responding to our survey.

- Can I claim if a delay means I miss my connection?
- Can I claim if my train is cancelled rather than delayed?
- Can I claim if the train is so crowded I couldn't get on?
- Can I claim if I am using a combination of tickets (split ticketing)?
- Can I claim if there is major disruption and you are advising people not to travel?
- Can I claim if I am using a 'multi-modal' season ticket valid on local rail and bus services? For example, the West Yorkshire MCard season ticket.

In our view the answer to each of these should be yes – but we know not all train companies take a consistently passenger friendly approach to these issues. Furthermore, there is often little or nothing on websites to inform passengers one way or the other. If passengers cannot find this information they may just give up on claiming, end up having claims rejected, or be passed between companies.

In our report we recommended 'All websites should display clear guidance on when you can and cannot claim. This should cover different scenarios such as travelling with more than one operator and when using a combination of tickets (split tickets). This should be consistent across all train companies.' We hope that the proposals will be implemented in such a way as to bring clarity and implementation of consistently passenger friendly guidance about claiming for passengers.

Notification of e-ticket bookings

We also welcome the expectation outlined in the proposals that a link to information about compensation is provided as part of the purchasing process via notification of online bookings and that train companies refer to this information in social media communications. The draft code of practice refers to 'notification of e-ticket bookings'. The term 'E-ticket' can be understood to mean refer to a specific form of rail ticket with a barcode often available as a 'PDF' to be printed or shown on a mobile phone. While it may be of particular benefit to include details directly on E-tickets, we would hope information about delay compensation would be included in notifications, for example, confirmation emails following an online purchase regardless of the chosen ticket medium, including, for example, paper tickets to be collected from the station or delivered by post. For clarity, we suggest the drafting is amended to refer to 'tickets purchased online' not only 'e-ticket bookings'.

b) on board and at stations

We welcome the expectation in the consultation document that train companies use posters, vinyls, leaflets, information screens and announcements, to provide passengers with information on delay compensation. We believe alerting passengers to this information, particularly with audible announcements by members staff, is of particular importance during disruption and have addressed this in more detail in our response to question six.

c) in person

We agree it is reasonable for passengers to expect customer-facing staff to be able to provide accurate information on delay compensation and welcome expectation that passengers can obtain information in person or when communicating with staff online or on the phone.

Q5. Is the list of the information requirements comprehensive? What, if anything, should be added (or removed)?

The list appears comprehensive. We note that the code of practice is intended to establish a baseline and welcome the expectation set out in the code of practice that train companies should seek to improve their service beyond this level.

Q6. Are the requirements for proactive provision of information by train companies during disruption clear and proportionate? Are there any further requirements which should be specified?

We welcome the specific requirement for train companies to proactively provide their passengers with information on delay compensation during service disruption. Transport Focus's recent [Delay Repay compensation survey](#) (February 2020) found just 31 per cent of passengers said the train company made them aware of their right to compensation when they last experienced an eligible delay. Research by the Rail Delivery Group ([RDG PIDD 29 report](#) January 2020) found only 54% of passengers were satisfied with the information received on compensation and refunds and only 5% were provided with this information when their train was cancelled and only 12% for other disruption to their journey. This is evidence that the current approach is not effective enough and that a license condition to require this information is required is necessary.

a) On the train

When asked how they wanted to be informed about eligibility, the most popular method in Transport Focus's recent [Delay Repay compensation survey](#) (February 2020) was an announcement on the train or at the station (44 per cent), followed by a claim form handed out on the train or at the station (39 per cent) and to be notified directly by the train company by email/text (39 per cent). Transport Focus

recommended in our recent [Make Delay Pay: improving compensation for rail passengers](#) (February 2020) that 'train companies ensure that staff include information on compensation when making announcements about delays on board trains and at stations.

Announcements are passengers' first preference as means of being notified about their entitlement to compensation. There is already an expectation on train companies that they keep passengers informed during disruption, including using announcements. Whether at the station or on the train, when announcements to the effect of 'Sorry for the delay...' are being made we think it is reasonable to expect these announcements to go on to include information to the effect of 'you may be entitled to compensation...' where the qualifying delay length has been met.

In reference to announcements on the train, the draft code of practice states:

'i. In-train announcements when a train's arrival at a station may be above the relevant time threshold for delay compensation on that service. This may include voice announcements and / or information screen displays.'

Information screens are an important additional way of notifying passengers about their entitlement to compensation, but we do not view them as an alternative to audible announcements, especially 'live' announcements made by members of staff, as a means of proactively raising awareness. We suggest the code of practice is drafted to reflect the importance of audible announcements and requires operators to make voice announcements, and use information screen displays as an additional measure, where the technology is available, rather than an alternative.

b) At the station

In reference to announcements about entitlement to compensation at stations the draft code of practice states:

'This may not be appropriate at large or busy stations with multiple platforms and frequent service operations, or unstaffed stations.'

We recognise announcements might not be appropriate in some limited circumstances but are concerned the draft could currently be interpreted to cover a great deal of stations that are either busy, or unstaffed. For instance, many unstaffed stations have recorded or 'down the line' PA systems which could be employed effectively. Passengers would also benefit from announcements about entitlement to compensation being made, as appropriate, at Network Rail managed stations. We suggest consideration is given to amending the draft code of practice to reflect an expectation that announcements (often additional reference to compensation rather than additional announcements per se) are made about entitlement to compensation at stations unless there is a specific reason they are not possible or appropriate.

c) Online

In referring to providing information about entitlement to compensation during disruption online the proposals suggest train companies use ‘social media and, where appropriate, email or text to passengers who may have been affected.’ However, the draft code of practice states ‘iv. Online and via social media – general messaging about compensation rather than being linked to a specific service.’

We suggest the draft code of practice is amended to reflect the expectations set out in the proposals and the evidence from Transport Focus’s recent [Delay Repay compensation survey](#) (February 2020) that:

- email/text is one of passengers preferred methods of being notified about their entitlement to compensation.
- 83 per cent of passengers would be happy to receive an email or text message as a prompt to claim Delay Repay. Willingness might be even greater if confirmation the delay linked to a pre-populated claims form.

We would suggest that in this instance ‘where appropriate’ could be interpreted as where a passenger has booked online, provided their contact details and indicated their intention to travel on a specific train service (and especially if the ticket is an Advance ticket that can only be used on that specific train). In these circumstances we believe it is reasonable for the passenger to expect proactive communication from the train company to alert them to their entitlement to compensation if they travelled on that train as intended. Digital ticketing should make this easier, but even with paper tickets more could be done now. We believe reflecting this expectation in the code of practice would be proportionate and not unnecessarily burdensome, while having the potential to make a material difference to passengers’ awareness and likelihood to claim compensation.

Q7. Any there any other requirements you consider would be necessary and proportionate to improve passenger awareness of delay compensation?

We welcome the proposals as set out in the consultation document and do not see an immediate need for additional requirements. In our responses to questions four and six we have made suggestions for where the drafting of the code of practice could potentially be improved to ensure it fully reflects the needs of passengers and the expectations set out in the proposals.

Claims process

Q8. Do you have a view on the timescales, and associated requirements for contacting passengers, we have proposed?

20 working days

We do not believe the requirement to process claims within 20 working days is stretching or reflective of trains companies’ actual performance. We agree a more

demanding, reduced timescale could incentivise more passengers to claim and help overcome any perception that the claims process is slow.

In other sectors consumers are accustomed to refunds (analogous to compensation for delays) being processed quickly, for example when returning goods purchased online. Indeed many Delay Repay claims are already paid in a similar timely way. We note that the draft code of practice retains the 20 working day target. We would welcome a reduction of this timescale.

Stop the clock

We agree it should not be necessary to include a provision to 'stop the clock' if the train company needs to contact a passenger to obtain additional information. We welcome this stance and agree it will act as an incentive on train companies to ensure that their requirements for information are clear and prompt checking and processing of claims overall.

We also recognise that train companies cannot leave claims open indefinitely. The timescale of 20 working days seems appropriate. This should avoid the unhelpful scenario, which could arise with a shorter timescale, whereby a claim could be closed, but then submitted again within 28 days of the delayed journey.

Q9. Are the provisions on information requirements clear and proportionate? Do they provide sufficient flexibility to reflect the variety of claim and ticket types, whilst addressing the risk of unduly onerous information requirements?

We welcome the expectation set out in the proposals that train companies ensure that claim forms should require only the essential information necessary to process a claim.

We know that for some passengers the amount of detail required on the claim form can be off-putting. We accept that with a paper ticket some data entry maybe inevitable but passengers filling out an online claim form do ask why they have to provide a photo of the ticket and then manually enter the ticket number, reference number, stations and price, all of which are visible on the ticket.

We understand that the more manual data entry the passenger does the easier it is for train companies to use automated verification systems to process claims more quickly. However, it is possible to process claims promptly without transferring the burden of processing to passengers. We found a wide range of information requirements on claim forms in the audits which were published in our report [Make Delay Pay: improving compensation for rail passengers](#) (February 2020). We hope the code of practice will help to reduce the burden on passengers and ensure a focus on essential information necessary to process a claim.

We hope future iterations of the code of practice will embed existing best practice in automation and 'one-click' compensation as part of the baseline expectation of all

train companies. We welcome continued support for a single standardised claim form which could reduce scope for error in filling in the form, allow familiarisation with the process and increase the willingness of passengers to claim. We agree this proposal should be progressed by the industry.

Q10. Is the provision on alternative forms of evidence clear - does it allow adequate flexibility for innovative solutions?

We welcome the principle that train companies should be flexible in terms of evidence requirements. This is particularly important where passengers' tickets may have been retained by automatic ticket gates at stations. We are not convinced location technology will be readily available or suitable alternative for many passengers and have doubts whether this would be regarded as reasonable evidence for a train company to request. Email confirmation of a ticket purchase, a seat reservation, or the outward portion of a return ticket (or vice versa) may be more appropriate examples of alternative evidence. These forms of evidence should reasonably be expected to be sufficient where it is not possible to supply the original ticket and to support a claim, while enabling the train companies to monitor duplicate or fraudulent claims.

Q11. Is the provision on physical format claims clear and proportionate?

We welcome the proposed requirements to make physical claim forms available at staffed stations and for passengers to be able to submit completed claim forms at staffed stations too. This is an important ongoing protection to ensure that the claims process is accessible to as many passengers as possible, not only those able to submit a claim online. In order to make a claim online it is often not only necessary to be able to access the train company's website and claims form, but also to take and upload a photo of the train ticket, which in itself can be an additional barrier.

It is unclear whether it is proposed that it should be possible to submit claims for delays experienced when travelling with any operator, only operators with trains calling at that station, or only delays experienced when travelling on the Station Facility Operator's trains. Clearly for passengers, the more seamless and 'joined-up' the experience, the better, but it is important that any limitations here are made clear to passengers. This highlights how collaboration and standardisation of claims forms (physical as well as online) between train companies could help to make the claims process simpler and more accessible for passengers.

We accept that it is in both passengers' and train companies' interests for the vast majority of passengers to use a claims form (online or physical). However, it is important that a requirement to use a claims form does not become an artificial barrier to claiming delay compensation. We do not believe it is the intention of the proposals to create a barrier for passengers who cannot access/print the online claims form or easily visit a station to collect a physical form. If an operator receives a passengers' tickets and journey details in the form of a letter or email we would still

expect operators to make every effort to process the claim even if this is not advertised as a preferred means of claiming.

Current good practice is for train companies to offer a freepost address for delay compensation claims. We would hope this continues, ensuring passengers who cannot access the online form do not have to pay to make a claim.

Q12. Are the requirements with regards to online claim processes clear, proportionate and comprehensive?

We welcome the requirement for operators to offer passengers an account facility to save their details, including the details of their season ticket. Having to re-enter details and load a picture of the ticket each time adds unnecessary complexity. In our Make Delay Pay report we recommended 'Train companies should raise awareness of their Delay Repay accounts and ensure they 'remember' all key information, including season ticket details', so this is a welcome improvement and we're pleased to see our recommendation being progressed.

In our recent [Delay Repay compensation survey](#) (February 2020) we found even amongst commuters most didn't have an account and half were unaware the facility existed. We would welcome further efforts by train companies to ensure that passengers making a claim are aware they can set up an account to make future claims quicker and simpler.

In relation to online accounts for booking tickets the consultation document refers to passengers being able to 'use these same (or equivalent) accounts to claim compensation'. We suggest best practice should be for the accounts to be the same, or at least directly linked. Using the same, or a linked account would enable claim forms to be prepopulated with journey, contact and ticket details or allow for passengers to simply select a previous booking against which they need to make a delay compensation claim. This could reduce the need for them to enter details of the train used or the ticket details and would also have the benefit of meaning those passengers who already have an account to purchase tickets would not need to be encouraged set up a separate compensation account too.

Q13. Any there any other requirements you consider would be necessary and proportionate to improve the claims process?

The requirements specified should lead to improvements in the claims process for passengers, most notably the requirement to offer an account facility that can store passengers' details, including their season ticket.

We would hope that train companies will go further in terms of automation of the process for passengers. Existing train company best practice shows it is already feasible to compensate passengers automatically when they have reserved a space

on a specific service, or smartcard data provides sound evidence of which service they travelled on.

We acknowledge it may be beyond the scope of this code of practice to require *automatic* compensation. However, as detailed in our response to question six, we would hope that an important step towards *automation* could be progressed now, with a proportionate requirement within the code of practice to alert passengers whose ticket, travel and contact details they hold (using email, text or other notification) that they may be able to claim. This would not be a disproportionate burden for operators and would have the potential to make a material difference to passengers' awareness and likelihood to claim compensation.

Continual improvement and reporting

Q14. Do you have a view on the requirement that train companies report annually on the steps taken to improve awareness and processes for delay compensation?

Benchmarking

We welcome the requirement for train companies to report on steps taken to improve their performance. We agree that reporting of performance data should help to facilitate benchmarking and accountability. In particular we welcome the proposal to publish the average time for claims to be processed. This should enable the respective performance of train companies to be compared more effectively than performance against the current 20 working day target alone.

We agree that publishing information for passengers about the volume of compensation payments and average response times may serve to encourage passengers to submit a claim. However, response times that are perceived by passengers to be slow could have the opposite effect and dissuade claims. As detailed in our response to question eight, we would welcome a reduction to the current 20 working day timescale to provide a firm incentive for faster claims processing.

Innovation to overcome indifference

We welcome that the proposals highlight efforts made by some train companies to improve their offer to passengers and encourage them to claim, including providing the option to donate compensation to charity or to 'accumulate small payments of compensation before they are redeemed'.

In our [Delay Repay compensation survey](#) (February 2020) we tested potential ways of overcoming this sense of indifference:

- a 'wallet' function that allows smaller payments to accumulate and which can be redeemed at a later point
- option to swap compensation for complimentary tickets for a future journey

- option to swap compensation for other offers or rewards – for example a free coffee
- option to donate compensation directly to a charity.

Just over three quarters of people who experienced an eligible delay in the last six months, but who never make a claim for Delay Repay, said that at least one of these options would encourage them to claim. Therefore in our report [Make Delay Pay: improving compensation for rail passengers](#) (February 2020) we recommended 'Implementation of new schemes designed to overcome 'indifference'. This could include a wallet function that allows smaller payments to accumulate and be redeemed at a later point, the option to 'swap' compensation for complimentary tickets or for other offers or rewards (such as a free coffee), and the ability to donate compensation directly to charity.' We hope the proposals that operators provide evidence of their efforts to improve will incentivise more operators to implement and promote more new schemes like these to make claiming compensation more attractive to passengers.

Q15. What is your view of our proposals for passenger surveys?

We have doubts about the proposal to survey passengers about their views on awareness and process as part of the claims form. While we acknowledge the questions would be presented as optional we believe they may still be seen to make the claims form longer and work against the key objective of making the claims process as quick and simple as possible, requesting only essential information from the passenger. It may be better to survey passengers at other stages in the process, for example as part of confirmation that the claims form has been submitted or when a decision on a claim is being communicated.

Surveys of those claiming compensation, whatever the stage of the claims process, will of course only provide insight into the views of those passengers who are aware of their entitlement. We agree such surveys could be valuable in providing a benchmark and then tracking ongoing performance, but further passenger research will still be necessary to ensure the views and experience of those who do not claim is understood.

Q16. Are there any other matters it would be helpful to seek information upon?

We suggest it may be helpful to seek further information and reporting on rejected claims and the proportion of rejected claims that are subsequently approved when contested by passengers. We have received reports from passengers that more complex claims can often be rejected in the first instance by automated systems, apparently without the passengers' written explanation for their claim having been read. For example, where a connection has been missed, or a train was too crowded to board and an automated system may have been unable to recognise the passenger was in fact delayed. Automated systems are undoubtedly valuable in enabling large numbers of claims to be processed quickly and cost effectively by the

industry, but this must be balanced with accuracy to ensure valid claims by passengers are not frustrated and passengers are made to contest decisions unnecessarily. A requirement for train companies to report on the proportion of rejected claims that are subsequently successfully approved could help to provide an insight into quality and accuracy and where improvement is required.

Third Party Intermediaries

Q17. What are your general comments on what is proposed, bearing in mind ORR's twin objectives to harness the potential benefits of greater TPI involvement whilst retaining important protections for passengers and taxpayers?

We are broadly supportive of the proposal for Third Party Intermediaries (TPIs) role in the claims process. We agree that TPIs could help to raise awareness of compensation, spur innovation and improve passenger access to compensation.

We welcome the requirements in the draft code of practice on clear information on fees charged by the TPI and clear acknowledgement that passengers can, if they wish, choose to submit a claim directly to licence holders, free of charge. It is important that both any fees and the option to claim for free directly with the train company is genuinely clear to passengers at the outset of the claims process so they can make an informed choice.

We have not commented in greater detail on the arrangements for collaboration between TPIs and train companies or the draft code of practice (Questions 18, 19 and 20). However, we broadly support the approach outlined and welcome the proposal to use a code of practice in this area to ensure the involvement of TPIs can be managed effectively and to the benefit of passengers. In particular we welcome the proposal that passengers are able to access binding resolution of their complaints via the Rail Ombudsman if necessary.

Drafting

Q21. Do you have any proposed amendments to improve the drafting and clarity of the licence condition, delay compensation code of practice, or TPI code?

In our responses to the preceding questions we have highlighted the small number of instances where we believe the drafting of the code of practice could be improved to reflect the spirit of the proposals and help ensure its aims are met.

**Transport Focus and London TravelWatch
August 2020**

Office of Rail Regulation

ORR consultation on improving access to delay compensation

Transport for London response to the Consultation questions

Licence condition

Q1. Is there any evidence that we have not considered which may be relevant to this chapter?

It is important to make it clearer in the licence condition that this is solely about delay repay and not consequential loss.

Q2. Should open access and concession operators (as well as franchise holders) be subject to the proposed licence condition? Should it apply to other holders of a passenger SNRP50?

TfL appreciates that whilst in principle, consistency for Open Access (OA) and concession operators is preferable, this would create additional costs to TfL and our operators and would be unreasonable.

TfL's chosen method would be that OA operators were not subject to the proposed licence condition, but would have the option to opt in.

In the event the licence condition is considered applicable to TfL as an OA operator, then the licence condition should not, either now or in the future, seek to mandate specific terms, eligibility thresholds or entitlements offered via TfL's delay compensation scheme.

As it stands, TfL already has a clear delay refund process set out for the following:

- Tube and DLR
- **Overground and TfL Rail**
- Emirates Air Line
- Bus and Tram

This information is available on our website at the following link:

<https://tfl.gov.uk/fares/refunds-and-replacements>

Q3. Do you have any comments on our initial draft of the delay compensation licence condition (in Annex A)?

Please refer to our response in question two.

Awareness

Q4. Do the requirements and drafting for the provision of information?

- online
- on board
- in stations
- in person

provide sufficient clarity and assurance for train companies and passengers?

Yes, it is felt this is sufficient.

TfL already does all the above as well as through social media and of course through public announcements at the time of disruption.

It is important to note that when disruption or delays occur, TfL focuses on moving customers around the disruption and help them to plan alternative routes etc. This is vital to ensuring customers can still reach their destination by alternate means. It is felt this is a much better way of providing a high standard of customer service and assist passengers in finding alternate routes rather than immediately referring them to the delay/refund section of the website. In most instances, customers just want to get to their destination, and we will always help them to do this when disruption occurs as well as provide additional information on our delay/refunds process.

TfL provides information online, through social media and of course through PA's at the time. All our operational data is provided through open data feeds. Hundreds of third-party apps make use of this data to provide real time information to customers. In August 2020, we launched our own app, TfL Go, to provide real time information including on disruption and catering to the needs of passengers with disabilities. Customers therefore have a wide variety of ways of accessing information. We focus on moving customers around the disruption rather than giving them messages about SDR's.

Q5. Is the list of the information requirements comprehensive? What, if anything, should be added (or removed)?

Yes, it is felt the list of information requirements is sufficient.

Q6. Are the requirements for proactive provision of information by train companies during disruption clear and proportionate? Are there any further requirements which should be specified?

It is felt that the proactive provision of information during disruption is clear and proportionate.

It is however important to also assist customers during disruption to find alternate routes. As mentioned above, in most instances, customers just want to get to their destination. There must be an appropriate balance between planning around the disruption where possible and assisting customers to find alternate routes (either in person through customer service assistants or by ensuring any disruption is fully up

to date online) as well as informing customers of any delay repay options available to them.

Q7. Any there any other requirements you consider would be necessary and proportionate to improve passenger awareness of delay compensation?

No – it is felt that the requirements set out are sufficient.

Claims process

Q8. Do you have a view on the timescales, and associated requirements for contacting passengers, we have proposed?

No – as stated above, we have our own clear processes set out on any claims processes available on our website (<https://tfl.gov.uk/fares/refunds-and-replacements>)

Q9. Are the provisions on information requirements clear and proportionate? Do they provide sufficient flexibility to reflect the variety of claim and ticket types, whilst addressing the risk of unduly onerous information requirements?

They are clear and proportionate.

Q10. Is the provision on alternative forms of evidence clear - does it allow adequate flexibility for innovative solutions?

Yes

Q11. Is the provision on physical format claims clear and proportionate?

They are clear. TfL would ask that the physical format requirement be broadened to include the provision of other 'online alternative' claim channels, such as telephony and not just a physical form. 95% of TfL claims are for smart media (Contactless, Oyster and ITSO) There would be data privacy issues of including some of these details on a physical form.

Q12. Are the requirements with regards to online claim processes clear, proportionate and comprehensive?

Yes

Q13. Any there any other requirements you consider would be necessary and proportionate to improve the claims process? Continual improvement and reporting

No – it is felt that the requirements set out are sufficient.

Q14. Do you have a view on the requirement that train companies report annually on the steps taken to improve awareness and processes for delay compensation?

To ensure openness and transparency, it is important that all transport authorities are subject to the same requirements when reporting on delay compensation processes.

It is felt that TfL already produces adequate reporting on the volume and value of service delay repayments in our transparency pages online, as well as sign posting to customers the delays section of the TfL website.

Q15. What is your view of our proposals for passenger surveys?

- Is it proportionate to survey every claimant for their views on awareness and process?

It is felt that it isn't proportionate to survey every claimant for their views on awareness and process as this could turn customers off and make the process onerous for customers.

- If not, what might the alternatives be e.g. specified number or percentage?

An alternative option could be to provide a link to a survey once the delay repay process has been rectified. This would give customers the option to provide feedback if they wish to do so.

- Should these be standardised?

No – see response to previous question.

To note, TfL already carries out regular customer surveys across all our modes.

- How frequently should they be undertaken?

N/A – see response above.

Q16. Are there any other matters it would be helpful to seek information upon?

It is important to ensure that whatever is developed doesn't increase the risk of fraud/misuse. It would be helpful to get some clarity/reassurance around this should there be any changes proposed as a result of the consultation outcome.

Third Party Intermediaries

Q17. What are your general comments on what is proposed, bearing in mind ORR's twin objectives to harness the potential benefits of greater TPI involvement whilst retaining important protections for passengers and taxpayers?

Q18. What are your comments on specific substantive policy proposals with regards to the appropriate standards for TPI firms, as listed below?

- Transparency
- Process
- Evidence
- Data quality
- Payment method

It is felt the above questions can be answered together.

TfL make it clear that our systems block TPIs and we do not foresee any change to that.

It is felt that TPIs can ‘muddy the waters’ in relation to the customer relationship – TfL does not want to give that up that direct customer relationship and we understand that is the case for the TOCs too. Whatever is proposed as part of this consultation or any potential outcomes needs to ensure this is not disjointed.

Although we recognise that TPIs could have a role to play in developing innovative solutions, there is the potential issue around what system is used – i.e. do each TOC have their own system to manage TPIs (which could have an associated additional cost etc.) or is there one central system. If the latter, then who funds it, who manages it. It would therefore be likely to result in no TOCs having any responsibility and for us (TfL), we would want people to claim using our own well-established system as previously referenced above.

There is also a risk of TPIs telling people they could be eligible (because their systems have identified delayed trains) when that may not be the case. It is felt this isn’t the right way forward for improving delay/repay compensation processes.

Data protection

Q19. What are your views on the proposed implementation regime, including the expectation that TPIs and licence holders should work cooperatively to ensure compliance with the Code, and the proposed mechanism for resolving disputes?

Compliance with data protection and protecting customer data is extremely important to us.

Although we haven’t banned TPIs, our security protocols for our Oyster online system, prevents TPIs from claiming on a customer’s behalf. TfL make it clear that customers must not share their personal details of their Oyster account with a third party (for example a TPI) so we should not be seen to be endorsing/encouraging that in future as it would fundamentally change our current protocols.

TfL take data protection extremely seriously – it is felt that any change to our current protocols would leave us open to increased risk of fraud/misuse.

Q20. What, if any, further measures do you consider necessary and proportionate to achieve the objectives?

As stated previously (in response to Q16), it is important to ensure that any further proposals/changes do not increase the risk of fraud/misuse. This is particularly vital as part of data protection. Any proposal/guideline needs to make it clear what the expectation is for all customer who potentially claim delay/repay under data protection.

Drafting

Q21. Do you have any proposed amendments to improve the drafting and clarity of the licence condition, delay compensation code of practice, or TPI code?

As stated above, it is felt that TfL already has appropriate, open and transparent procedures in place for managing any delay/repay claims.



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ORR compensation consultation
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25 Cabot Square
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17 September 2020

Dear team,

I am writing in response to the Office of Rail and Road's (ORR) consultation on delay compensation.

We support the ORR's proposal to introduce a new licence condition on improving access to delay compensation and agree that such a condition should apply to all train companies. Which? previously called for such measures in our submission to the independent Williams Review, *A railway that works for passengers*.¹ We believe that such a licence condition will increase the incentives on the industry to improve its overall performance for passengers.

While Which? welcomed the launch of the independent Williams Review and looks forward to seeing its final recommendations, we are pleased to see the regulator continue to take action to introduce measures that will deliver tangible improvements for passengers in the short-term.

Since Which? began campaigning for better rail services in 2015, we have raised concerns about low passenger awareness and complex processes for claiming compensation. It is clear that any changes to the licence conditions for train companies should seek to simplify these processes in order to ensure that more passengers are able to receive the money that they are owed.

We agree with the regulators analysis of the issues, in particular the acknowledgement of the complexity of claims processes across the sector. Our rail survey found that compensation on a third (32%) of eligible journeys was not claimed for because it was too much effort, while for a significant number (15%) of journeys it was because it was considered too difficult or time consuming. As the consultation notes, we also found that delay repay forms could ask consumers for up to 24 different pieces of information per claim.² We welcome the proposals to make the claim forms more consumer-friendly and agree that the forms need to be simpler, including only collecting the information required.

Which? has previously called for all passengers to be proactively informed about their rights to compensation at the time of a delay. In addition, research has highlighted that some awareness raising activities are markedly more effective than others. For example, on-board announcements are particularly effective – our research found that nearly a fifth (19%) of passengers first became aware of their right to compensation through an on-board

¹ Which?, *A railway that works for passengers*, Which? evidence submission to the Williams Review, May 2019

² Which?, *Revealed: how train companies are adding unnecessary hassle to claiming compensation*, 9 May 2019



announcement.³ The code of practice could more effectively take account of the impact that different activities have in raising awareness. Train operators and the regulator should regularly monitor outcomes and identify which activities are most effective in what circumstance.

Which? has previously highlighted the benefits of automatic compensation for increasing claims levels for delayed train travel. While simplifying the compensation process and raising consumer awareness are important steps to be taken, Which? continues to call for the introduction of automatic compensation for delayed and cancelled trips where possible.

If you have any questions regarding this response, please do not hesitate to contact me.

Yours faithfully,

Genevieve Lloyd, Campaigns Manager

³ Which?, Revealed: how train companies are adding unnecessary hassle to claiming compensation, 9 May 2019